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NOTES OF RECENT CASES.

[SUPREME COURT.]
J.C Shah, S M. Sikri and
J. M Shelat, JJ.
22nd November, 1967.

Union of India *v.*
M/s Indo-Afghan Agencies.
C.As. Nos. 885 to 893 and 973 to 975 of 1967.

Import and Export Act, (XVIII of 1947)—*Defence of India Rules* (1959), *rule* 84—*Emergency Provision (Continuous) Ordinance (XX of* 1946)—*Import (Control) Order,* 1955.

The claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. On the facts proved in this case, no ground has been suggested before the Court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation. This principle has been recognised by the Courts in India and by the Judicial Committee of the Privy Council in serveral cases.

Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an *ex parte* appraisement of the circumstances in which the obligation has arisen. We agree with the High Court that the impugned order passed by the Textile Commissioner and confirmed by the Central Government imposing cut in the import entitlement by the respondents should be set aside and quashed and that the Textile Commissioner and the Joint Chief Controller of Imports and Exports be directed to issue to the respondents import certificates for the total amount equal to 100 per cent. of the f.o.b. value of the goods exported by them, unless there is some decision which falls within clause 10 of the Scheme in question.

Cases considered: (1921) 3 K.B. 500; (1949) 1 K.B. 227; (1962) 3 S.C.R. 72; A.I.R. 1966 S.C. 1044; (1966) 1 S.C.R. 262; I.L.R. 22 Bom. 580; (1866) L.R. 1 H.L. 170; L.R. 28 I.A. 211; (1952) S.C.R. 43; I.L.R. 5 Cal. 669.

B. R. L. Iyengar, Senior Advocate (*R. N Sachthey* and *S. P. Nayar,* Advocates, with him), for Appellants (In all the appeals).

Bhagirath Dass, Senior Advocate (*Sobhag Mal Jain* and *B P Maheshwari,* Advocates, with him), for Respondents (In C.As. Nos. 885 and 893 of 1967).

O. P. Varma, Advocate, for Respondents (In C.As. Nos. 886 to 890 and 892 of 1967).

A. K. Sen, Senior Advocate (*O. P. Varma*, Advocate, with him), for Respondent (In C.A. No. 891 of 1967).

K. L. Arora and *H. K Puri*, Advocates, for Respondents (In C.As. Nos. 973 and 974 of 1967).

A. K. Sen, Senior Advocate (*H L. Anand* and *K. B. Mehta*, Advocates with him), for Respondent (In C.A. No. 975 of 1967).

G R. ——— *Appeals dismissed.*

[SUPREME COURT.]

S M. Sikri, J M. Shelat and *K. S Hegde, JJ* *23rd November*, 1967.

Mangulal Chunilal *v.* Manilal Maganlal. Crl.A No. 59 of 1965.

Bombay Provincial Municipal Corporation Act (*LIX of* 1949), *sections* 376 (1) (*d*) (*i*) *read with section* 392 (1) (a), *sections* 69 *and* 481.

A person who files a complaint under the Act must show that he has the authority to file that complaint and that authority cannot be conferred upon him by an erroneous interpretation long acquiesced in. In *Ballavdas Agarwala* v. *J C. Chakravarty*, (1960) 2 S C R 739 it was held that a complaint under the Calcutta Municipal Act, 1923, could only be filed by the authorities mentioned therein and not by an ordinary citizen. Similarly, here also only the authorities mentioned in section 481 read with section 69, can launch proceedings against person charged with offences under the Act or the Rules, Regulations or By-laws made, under it.

Cases considered: (1953) 55 Bom L R. 377; (1962) 3 Guj. L R. 260; C.A. No 500 of 1965; Judgment delivered on 5th September, 1967; (1953) 55 Bom.L.R. 377-379; (1960) 2 S.C R. 739.

B R. Agarwala, Advocate of *Messrs. Gagrat & Co.*, for Appellant.

R. H. Dhebar, Advocate, for Respondent No. 2.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

K.N. Wanchoo, C J. *R S. Bachawat*, and *G K. Mitter, JJ.* *23rd November*, 1967.

Boddu Venkatakrishna Rao *v.* Srimati Boddu Satyavathi. C.A.No. 245 of 1965.

Will—Interpretation of—Transfer of Property Act—Hindu Law.

It was argued that there were indications in the will that the intention of the testatrix was that the foster children should take as joint tenants and that this was apparent from the clause in the will which provided that:

"The entire property should be in possession of both of them and that both of them should enjoy throughout their lifetime the said property. . . . and that after their death the children that may be born to them should enjoy the same....".

From this one cannot spell out a joint tenancy which is unknown to Hindu Law. The testatrix did not expressly mention that on the death of one all the properties would pass to the other by right of survivorship. On a construction of the will it cannot be doubted that the testatrix never intended the foster children to take the property as joint tenants. The foster children who became tenants-in-common partitioned the property in exercise of their right.

As by the will the foster children were to have a life interest with a vested remainder to their children, the latter could only take *per stirpes* and not *per capita*. As Halsbury points out (Volume 39, Third Edition) at page 1106, Art. 1638 that a stirpital distribution would be adopted.

Cases considered : 23 I.A. 37 at 44 ; 21 Ch. D. 811 ; 60 I.A. 95 at 101 ; (1927) 1 Ch. D. 421.

K. R. Chaudhuri, Advocate, for Appellants.

A.K. Sen, Senior Advocate, (*T. Satyanarayana* Advocate, with him), for Respondents Nos. 1 to 3.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

S.M. Sikri, J M. Shelat, and *K. S Hegde, JJ.*
23rd November, 1967.

The State of Gujarat *v.* Jaswantlal Nathalal.
Cr.A.No. 93 of 1965.

Penal Code (XLV of 1860), *sections* 409 *and* 405—*Meanings of "entrusted" and "property"—Or "with any dominion over the property"*

On the proved fact, it is difficult to accept the contention of the appellant that after the sale of the cement in question the Government had any proprietary right over the same. Nor can it be said that the transaction in question resulted in any fiduciary relationship either between the Government transaction of sale though the sale in question was effected by the Government on the representation that cement was required for a particular purpose.

The term "entrusted" found in section 405, Penal Code, governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter—see *Velji Raghvaji Patel* v. *State of Maharashtra*, (1965) 2 S C.R 429. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust—see *Jaswantrai Manilal Akhaney* v. *State of Bombay*, (1956) S C.R. 483, 498-500. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment. It is true that the Government had sold the cement in question to B.S.S. solely for the prupose of being used in connection with the construction work referred to earlier. But that circumstance does not make the transaction in question anything other than a sale. After delivery of the cement, the Government had neither any right nor dominion over it. If the purchaser or his representative had failed to comply with the requirements of any law relating to cement control, he should have been prosecuted for the same. But we are unable to hold that there was any breach of trust.

Other cases considered : I.L.R. (1947) 1 Cal. 97 ; (1915) 2 K.B. 683.

R. H. Dhebar, Advocate, for Appellant.

N. N. Keshwani, Advocate, for Respondent

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

M. Hidayatullah, and *C.A. Vaidialingam, JJ.*
24th November, 1967.

Baul *v.* The State of U.P.
Crl.A No. 47 of 1965.

Penal Code (XLV of 1860), *sections* 325 *read with* 109, *sections* 302/34 *and section* 302.

No doubt the original prosecution case showed that Shadhai and Ramdeo both hit the deceased in the head with their lathies. One is tempted to divide the

two fatal injuries between the two assailants and to hold that one each was caused by them. If there was common intention established in the case the prosecution would not have been required to prove which of the injuries was caused by which assailant But when common intention is not proved the prosecution must establish the exact nature of the injury caused by each accused and more so in this case when one of the accused has got the benefit of the doubt and has been acquitted It cannot, therefore be postulated that Sadhai alone caused all the injuries on the head of the deceased Once that position arises the doubt remains as to whether the injuries caused by Sadhai were of the character which will bring his case within section 302. It may be that the effect of the first blow became more prominent because another blow landing immediately after it caused more fractures to the skull than the first blow had caused. Because of these doubts Sadhai is entitled to the benefit of doubt. His conviction may be safely rested under section 325 of the Indian Penal Code, but it is difficult to hold in a case of this type that his guilt amounts to murder simpliciter because he must be held responsible for all the injuries that were caused to the deceased. We convict him instead of an offence under section 302 for an offence under section 325, Indian Penal Code and set aside the sentence of imprisonment for life and instead sentence him to rigorous imprisonment for seven years.

As regards Baul his instigation was likely to result in the kind of injury which was caused to the deceased. The least that could have happened was a grievous injury. In these circumstances, we do not think that there is any room for interference in his case His appeal must therefore be dismissed

The appeal is therefore allowed in respect of Sadhai to the extent indicated above and dismissed as to Baul

P. K Chakravarti and *C.P Lal*, Advocate, for Appellants

K. K. Jain and *O. P. Rana*, Advocates, for Respondent.

G R. —— *Order accordingly.*

[SUPREME COURT]

S M. Sikri, J M Shelat and *K. S. Hegde, JJ.*
27th November, 1967.

Munshi Ram *v.* The Delhi Administration.
Crl.A.No. 124 of 1965.

Penal Code (XLV of 1860), sections 447, 324 read with sections 49 and 148—Criminal Procedure Code (1898), section 342—Displaced Persons Evacuee Property Act 1954—Right of private defence of property

It is true that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner But stray or even intermittent acts of trespass do not give such a right against the true owner The possession which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period and acquiesced in by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than necessary. Such entry will be viewed only as a resistance to an intrusion upon possession which has never been lost The persons in possession by a stray act of trespass, a possession which has not matured into settled possession, constitute an unlawful assembly, giving right to the true owner, through not in actual possession at the time to remove the obstruction even by using necessary force.

From the proved facts, it is evident that P Ws. 17 and 19 had gone to the field with their friends, P.W. 19 being armed with a deadly weapon, with a view to intimidate Jamuna and to assert their possession. Therefore they were clearly guilty of criminal trespass. They also constituted an unlawful assembly.

On the basis of the proved facts it cannot be said that the appellants had exceeded their right of private defence.

In the result, this appeal is allowed, the conviction of the appellants is set aside and they are acquitted.

Cases considered : A.I.R. 1927 Mad. 97; C A. No. 145 of 1965, decided on 9th November, 1967; (1963) 3 S C.R. 489; 50 Crl L J. 868, I.L.R. 1955 Hyd. 406; A.I.R. 1943 Mad. 590

Bhawani Lal and *Kartar Singh Suri*, Advocates, and *F. C. Agrawala,* Advocates for *P C. Agrawala,* Advocates for Appellants

R. N. Sachthey, Advocate for Respondent

G.R. ——— *Appeal allowed.*

[SUPREME COURT].

S M Sikri, J M. Shelat and *K. S. Hegde, JJ.* *1st December,* 1967

Suleman Rahiman Mulani *v.* The State of Maharashtra. Crl.A.No. 50 of 1965.

Penal Code (XLV of 1860), *section* 304-*A read with sections* 3, 5, 89, 112 *of the Motor Vehicles Act (IV of* 1939) *and section* 201 *read with sections* 5 *and* 89 *of the Motor Vehicles Act.*

The scope of section 304-A, Penal Code came to be considered by this Court in *Kurban Hussein Mohammeddali Rangawalla* v. *State of Maharashtra,* (1965) 2 S.C R. 622, the ratio of that decision governs the facts of the present case.

In the present case, the proximate cause of the accident is not clear. The possibility of the accident having been caused due to the fault of the deceased cannot be made out . The question whether appellant No. 1 was proficient in driving a jeep or not does conclude the issue. His proficiency in driving might furnish a defence which a learner could not have but the absence of proficiency did not make him guilty. The only question was whether, in point of fact he was not competent to drive and his incompetence was the cause of death of the person concerned.

On behalf of the prosecution reliance was placed on the decision of this Court in *Juggankhan* v. *State of Madhya Pradesh,* (1965) 1 S C R 14. The ratio of that decision does not apply to the facts of the present case. In that case, it had been conclusively proved that the rash or negligent act of the accused was the cause of the death of the person concerned

For the reasons mentioned above, the conclusions of the Courts below that on the basis of the facts found by them the first appellant could have been held guilty under section 304-A, Indian Penal Code cannot be agreed to. His appeal is allowed. From that finding, it follows that the second appellant could not have been convicted under section 201, Indian Penal Code

In the result, the second appellant's appeal is allowed in full and he is acquitted of all the charges. The first appellant's appeal is allowed in part and his conviction under section 304-A is set aside But his other convictions are sustained, namely, his convictions under section 3 read with section 112 of the Motor Vehicles Act (IV of 1939) and section 89 of the same Act, for which offences only a sentence of fine had been imposed upon him.

Other cases considered: 4 B L.R 679; (1953) S C R 94.

A. S. R. Chari, Senior Advocate (*O. P Malhotra, V. N Ganpule* and *P. C. Bhartari,* Advocates and *O. C. Mathur,* Advocate of *M/s. J. B. Dadachanji & Co.* with him) for Appellants

M. S. K. Sastri and *S. P. Nayar,* Advocates for Respondent.

G.R. ——— *Appeal allowed in part.*

Ismail, J. Subramanian *v.* Kaliammal.
13th November, 1967. C.M.A.No. 43 of 1965.

Civil Procedure Code (V of 1908), *Order* 41, *rule* 23—*Order of remand—Jurisdiction, when arises—Scope of expression " where the appellate Court considers it necessary in the interest of justice to remand the case ".*

The jurisdiction of an appellate Court to remand a case for fresh disposal arises only if the Court comes to the conclusion that the findings of the trial Court are erroneous and are liable to be set aside or reversed. In the absence of such a conclusion a power of remand is not available to an appellate Court

The expression " where the appellate Court considers it necessary in the interest of justice to remand the case " has to be considered with the other alternative that on having set aside the judgment and decree of the trial Court, the appellate Court itself will have to finally dispose of the matter in the appeal. Consequently the contrast is between the power to remand for fresh disposal and the power to decide by the appellate Court itself, with the result the expression "in the interest of justice" has reference to the appellate Court remanding a suit for fresh disposal instead of itself deciding it. The expression "interests of justice" does not widen the power of the appellate Court to remand a suit in the sense that irrespective of the fact whether it comes to the conclusion that the judgment and decree of the trial Court are liable to be reversed or set aside or not, if the appellate Court is of opinion that the interest of justice require that there should be a fresh trial, it can remand a suit for fresh disposal.

Held, in this case the appellate Court did not pass its order of remand on the ground of any error on the part of the trial Court or defect in the procedure adopted by the trial Court but merely to enable the plaintiffs to supply the deficiencies in their case and to do what they failed to do when they went to the Court with a definite case and therefore the order of remand cannot be sustained

T. R Ramachandran, for Appellant.

R. Gopalaswami Iyengar, for Respondents.

S.V.J.

Appeal allowed,
Order of remand set aside.

T. Venkatadri, J. The Management of M/s. Andhra Laundry
30th November, 1967. (Proprietor: R.A. Masilamani, Madras *v.* The Presiding Officer, Additional Labour Court, Madras
W.P Nos. 62 to 73 of 1965

Industrial Disputes Act (XIV of 1947), *section* 25-*FFF—Closure compensation—Receipts passed by workmen in full and final settlement of claims at the time of closure—Subsequent application before the Labour Court claiming full statutory benefits—Claim precluded by estoppel—Contracting out of statute, permissible in regard to closure compensation—Distinction between claim for retrenchment compensation and closure compensation*

Where the workmen received amounts and passed receipts in full and final settlement of their claims with full knowlede of rights, at the time of the closure of the business, they would be precluded from claiming the full statutory benefits provided under section 25-FFF of the Act.

Where a statute prescribes that a contract shall be in a particular form, or shall or shall not contain certain terms, the statutory form must be followed. But in the absence of express prohibition to the contrary, the statutory terms may be waived by the parties to the contract. The conditions in the statute may be imposed in such terms that waiver is impossible.

There seems to be a difference in the wording of the sections between retrenchment compensation and closure compensation. In the case of retrenchment, the

parties cannot waive payment compensation or notice; but it appears that the parties can, in the case of closure compensation, contract themselves out of the statute.

M. R. Narayanaswami and *D. Meenakashisundaram* for Petitioner.

B. Lakshminarayana Reddy for 2nd Respondent.

V.S. ——— *Petitions allowed.*

P.S. Kailasam, J.
29th January, 1968.

A.V. Arunachalam, Prop., Rohini Touring Talk es, Ithangarai *v.* V Thandayuthapani.
W.P.No. 3967 of 1967.

Madras Cinemas (Regulation) Act (IX of 1955) *and Madras Cinematograph Rules,* 14 *and* 101—*No objection certificate—Distance between two cinemas—Main entrance—Cinema house located in a big site opening into a public thoroughfare—Cinema house having an entrance inside the site—Distance upto the actual entrance to the Cinema house to be reckoned.*

The expression 'ma n entrance' in Rule 14 (4) of the Rules has no technical meaning and as the rule itself shows 'main entrance' is the entrance of the actual building in which cinema shows are to be given.

In cases where the cinema house is located inside a b g site, the road frontage on the public thoroughfare will be the place where the site opens into the road. The main entrance of the cinema will be the actual entrance to the cinema ins de the site and the distance for the purpose of no-objection certificate will have to be reckoned upto this distance *i.e.*, actual entrance to the Cinema house.

V. P. Raman and *N. R. Chandran*, for Petitioner.

S. Ramalingam, for 1st Respondent.

V.S. ——— *Petition dismissed.*

P. Ramakrishnan J.
30th January, 1968.

State of Madras *v.* S. Krishnan
W.P. No. 2762 of 1965.

Motor Vehicles Act (IV of 1939), *sections* 44(5) *and* 16 *and rule* 134-*AA of the Rules—Superintendent of Police under powers of delegation, suspending driving licence—Appeal to the State Transport Appellate Tribunal—Appeal allowed holding rule empowering delegation is invalid—Order liable to be quashed—Appellate Tribunal constituted under the Act—No power to question the validity of a rule framed under the Act.*

The Superintendent of Police acting under the powers delegated by the Regional Transport Authority under rule 134-AA, suspended for a short period the driving licence of the first respondent. The State Transport Appellate Tribunal allowed the appeal filed by the driver holding that rule 134-AA was invalid. The State filed the writ petition.

Held, an authority constituted under an Act cannot, unless expressly so authorised, question the val d ty of any of the provisions thereof Since the order of the State Transport Appellate Tribunal amounts to a declaration that rule 134-A A is an invalid rule, as it suffers from the defect of improper delegation, it was beyond the jurisd ction of the State Transport Appellate Tribunal to g ve such a decision.

S. T Ramalingam for the Government Pleader on behalf of Petitioner.

K. Ramachandran and *G. Desappan*, for 1st Respondent.

V.S. *Petition allowed.*

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P.S. Kailasam, J.
1st February, 1968.

G.S. Devasahayam *v.*
Government of Madras.
W.P.No. 171 of 1967.

Civil servant—State Government—Age of retirement—Different categories of servants—Retirement at fifty and fifty-eight—Provision if discriminatory—Tests—Dearth of officers utilisation of technically qualified and experienced servants—Retirement at fifty-eight—Object, efficient public service—Not discriminatory.

Constitution of India (1950), *Articles* 14, 15 *and* 16.

Construing the provisions of Articles 14, 15 and16 of the Constitution, it is clear that a Government servant is entitled to equality of treatment in respect of matters relating to employment under Article 16 (1) and that would include the provisions as to salary, periodical increments, leave, gratuity, pension and the age of superannuation. The person adversely affected is entitled to challenge any order on the ground of discrimination. But its validity can be sustained if the two tests of intelligible classification and reasonable nexus are satisfied.

The retirement of one category of Government servants at the age of 55 and another at the of age 58 can be supported on the ground of dearth of officers, utilization of the services of technically qualified and experienced officers in a particular category and where the object sought to be achieved is efficient public service.

M. V. Krishnan for Petitioner.

Advocate-General for the Government Pleader on behalf of Respondent.

V.S. *Petition dismissed*

[SUPREME COURT.]

M. Hidayatullah, S.M. Sikri and *K. S. Hedge, JJ.*
4th December, 1967.

State of Madhya Pradesh *v.* Ram Prasad.
Crl.A.No. 92 of 1965.

Penal Code (XLV of 1860), *sections* 302, 324, 304, *Part II.*

In the present case, Ram Prasad poured kerosene upon the clothes of Mst. Rajji and set fire to those clothes. It is obvious that such fire spreads rapidly and burns extensively. No special knowledge is needed to know that one may cause death by burning if he sets fire to the clothes of a person. Therefore, it is obvious that Ram Prasad must have known that he was running the risk of causing the death of Rajji or such bodily injury as was likely to cause her death. As he had no excuse for incurring that risk, the offence must be taken to fall within *Fourthly* of section 300, Indian Penal Code, in other words, his offence was culpable homicide amounting to murder even if he did not intend causing the death of Mst. Rajji. He committed an act so imminently dangerous that it was in all probability likely to cause death or to result in an injury that was likely to cause death. We are accordingly of the opinion that the High Court and the Sessions Judge were both wrong in holding that the offence did not fall within murder.

Mr. Rana contended that there was no proof from the medical reports that kerosene oil was employed because the wounds did not smell of kerosene. Apart from the fact that both the Courts have held that kerosene was so employed, the evidence is quite satisfactory that kerosene was in fact poured upon the victim before the clothes were set on fire. The omission of this fact in the medical reports is not of consequence.

We accordingly allow this appeal, substitute the conviction under section 302 of the Indian Penal Code in place of the conviction under section 304, Part II and sentence Ram Prasad to imprisonment for life.

I. N. Shroff and *M. N. Shroff*, Advocates, for Appellant.

O. P. Rana, Advocate at State expense for Respondent.

G.R. — *Appeal allowed.*

[SUPREME COURT.]

M. Hidayatullah and *C. A. Vaidialingam, JJ.*
5th December, 1967.

Bhanwar Singh *v.* State of Rajasthan.
Cr.A.No. 137 of 1967.

Penal Code (XLV of 1860), *sections* 120-*B*, 420, 420 *read with sections* 511 *and* 467 *read with sections* 471 *and* 380.

The object of the conspiracy has to be determined, not only by reference to the sections of the penal enactment, referred to in the charge, but on a reading of the charges themselves. On a perusal of the charges, framed against the appellants, we are satisfied that the only object of the conspiracy was to cheat the banks or the post offices, referred to in the charges, which is an offence under section 420, read with section 120-B, Indian Penal Code, for which no sanction is necessary. No doubt there are also charges of committing forgery of valuable security and using such forged documents, which are offences under sections 467 and 471, Indian Penal Code, and non-cognizable. But a reading of the charges, as a whole, makes it clear that it is not the case of the prosecution that committing forgery of the Indian and British postal orders or the cheques, or using such forged documents, was the object of the conspiracy. The accused would not be satisfied by merely entering into a conspiracy to forge the postal orders or the cheques, or even to use such forged documents. The forging of the documents and using such forged documents, were only means adopted by the accused for realising the object, of the conspiracy, which was to cheat the postal and bank authorities, at the places mentioned in the charge, by dishonestly inducing them to part with money. Therefore the trial of these accus-

-ed, for offences under sections 120-B read with sections 467/471 and 420, Indian Penal Code, and other allied offences, cannot be held to be illegal, on the ground that sanction under section 196-A(2) of the Criminal Procedure Code, had not been obtained.

Sobhag Mal Jain, Advocate, for Appellants

H R Khanna and *R N Sachthey*, Advocates, for Respondent

G R *Appeal dismissed.*

[SUPREME COURT]

J. C. Shah, V. Ramaswami and *V. Bhargava, JJ.* *12th December*, 1967.

Balvantrav Ratilal Patel *v* State of Maharashtra. C A No 442 of 1965.

Master and Servant—Bombay Civil Services Rules—Power to suspend a Government servant pending enquiry into the allegations against his conduct

The general law on the subject of suspension has been laid down by the Supreme Court in three cases, *viz* *The Management of Hotel Imperial, New Delhi* v *Hotel Worker's Union*, (1960) 1 S C R 476; *T Cajee* v *U Jormanik Siem*, (1961) 1 S C R. 750; and *R P Kapur* v. *Union of India*, (1964) 5 S C R 431, It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the period of suspension Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. This principle of law of master and servant is well-established ; (See *Hanley* v. *Pease and Partners, Ltd*, (1915) 1 K B 698, *Wallwork* v *Fielding*, (1922) 2 K B 66 and the judgment of Cotton, L J. *Boston Deep Sea Fishing and Ice Co.* v *Ansell*, (1888) 39 Ch D. 339; It is equally well-settled that an order of interim suspension can be passed against the employee while an inquiry is pending into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld In this connection it is important to notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that he must not do anything in the discharge of the duties of his office In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting the employee must obey.

H. R. Gokhale, Senior Advocate, (*P N. Duda*, Advocate and *J. B. Dadachanji*, Advocate of *Messrs. J B. Dadachanji & Co.*, with him), for Appellant.

H M. Seervai, Advocate-General for the State of Maharashtra (*R. Gopalakrishnan* and *R. N. Sachthey*, Advocates, with him), for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT]

J C Shah, V Ramaswami and *V. Bhargava, JJ.*
14th December, 1967.

Kehar Singh *v*. Chanan Singh.
C.A. No. 781 of 1964.

Custom—Punjab Sidhu Jats of Muktasar of Ferozepur District—Whether collaterals of the fifth degree of the deceased landowner could take precedence over his married daughters in succession to his non-ancestral properties—Ratigen's Digest of Customary law—Riwaj-i-am.

Considering that in the neighbouring tahsils of the same district in regard to non-ancestral property a daughter has excluded collaterals and in Muktsar tahsil a sister has excluded collaterals, there is in our opinion sufficient material to displace the presumption of correctness of the Riwaj-i-am entries in this case. (In view of the considerations already mentioned in the judgment) the presumption attaching to the Riwaj-i-am entries is a weak presumption and in our opinion it has been sufficiently discharged by the evidence adduced by the respondents in this case. It is necessary to add that the appellants have not relied upon any instances in support of their case.

N S. Bindra, Senior Advocate, (*Kartar Singh Suri, Champat Rai* and *F. C. Agrawala,* Advocates, with him), for Appellants

S. P. Sinha, Senior Advocate (*S. K. Mehta* and *K. L Mehta,* Advocates, with him), for Respondents Nos. 1, 3, 5 and 6.

Bishan, Senior Advocate (*S. K Mehta* and *K. L Mehta,* Advocates, with him), for Respondent No 4.

G R.

Appeal dismissed.

[SUPREME COURT]

M. Hidayatullah and *C A. Vaidialingam, JJ*
14th December, 1967.

Haroom Haji Abdulla *v*. State of Maharashtra.
Crl.A No. 42 of 1965.

Penal Code (XLV of 1860), *section* 120-*B read with section* 167 (81) *of the Sea Customs Act—Foreign Exchange Regulations Act,* 1947—*Retracted confession—Evidence Act, sections* 133, 114.

Of course, the confession of a person who is dead and has never been brought for trial is not admissible under section 30 which insists upon a joint trial. The statement becomes relevant under section 30 read with section 32 (3) of the Evidence Act because Bengali was fully tried jointly with Haroon. There is, however, difficulty about Noor Mohammad's statement because his trial was separated and the High Court has not relied upon it.

The law as to accomplice evidence is well-settled. The Evidence Act in section 133 provides that an accomplice is a competent witness against an accused person and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice The effect of this provision is that the Court trying an accused may legally convict him on the single evidence of an accomplice. To this there is a rider in *illstration* (*b*) to section 114 of the Act which provides that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. This cautionary provision incorporates a rule of prudence because an accomplice, who betrays his associates, is not a fair witness and it is possible that he may, to please the prosecution, weave false details into those which are true and his whole story appearing true, there may be no means at hand to sever the false from that which is true. It is for this reason that Courts, before they act on accomplice evidence, insist on corroboration in material respects as to the offence itself and also implicating in some satisfactory way, however small, each accused named by the accomplice. In this way the commission of the offence

is confirmed by some competent evidence other than the single or unconfirmed testimony of the accomplice and the inclusion by the accomplice of an innocent person is defeated. This rule of caution or prudence has become so ingrained in the consideration of accomplice evidence as to have almost the standing of a rule of law

The High Court has very searchingly examined the evidence of Kashinath and applied to it the checks which must always be applied to accomplice evidence before it is accepted. There is corroboration to the evidence of Kashinath in respect of Haroon from the confession of Bengali given independently and in circumstances which exclude any collusion or malpractice Regard being had to the provisions of section 133 of the Evidence Act, we do not think that we should interfere in this Appeal by Special Leave, particularly as we hold the same opinion about the veracity of Kashinath.

Nuruddin Ahmed, F C Agrawala, Champat Rai, S. V. Pikale and *P. C. Agrawala*, Advocates, for Appellant.

Adi P. Gandhi, H. R. Khanna and *S P Nayar*, Advocates, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

K N. Wanchoo C J, R.S Bachawat, J.M. Shelat, G K. Mitter and *C.A. Vaidialingam, JJ.*
14th December, 1967.

Anand Prakash Saksena *v.* Union of India.
W.P.No. 58 of 1967.

Indian Administrative Service Recruitment Rules, 1954—*Indian Administrative Service Pay Rules,* 1954—*Indian Administrative Service Regulation of Seniority Rules,* 1954—*All India Services Act* (1951), *section* 3 (1)—*Indian Administrative Service—Special Recruitment Regulation,* 1956—*Vires of Rule* 4 (3) *of Recruitment Rules—Special Recruitment Regulation,* 1960—*Articles* 14 *and* 16 *of the Constitution.*

The seniority of direct recruits *inter se* and promotees *inter se* is fixed by rule 4. The object of rule 3 (3) (*b*) is to fix the seniority of the promotees in relation to direct recruits. The promotees obtain promotion after long service in the State Civil Services. From the point of view of the promotee, his seniority should be counted from the date of his joining the State Civil Service. From the point of view of the direct recruit, the seniority of the promotee should be counted from the date of his appointment to the Indian Administrative Service. Rule 3 (3) (*b*) attempts to strike a just balance between the conflicting claims. It gives the promotee the year of allotment of the junior most direct recruit officiating continuously in a senior post earlier than the date of commencement of such officiation by the promotee. If no direct recruit was officiating continuously in a senior post on an earlier date, the seniority of the promotee is determined *ad hoc* In our opinion, the rule is not arbitrary or discriminatory and is not violative of Articles 14 and 16 of the Constitution.

Special recruits form a distinct class They are neither direct recruits nor promotees. Rule 9 of the Recruitment Rules does not treat them as direct recruits Regulation 3 (3) of the Special Recruits Seniority Regulations properly adopts the formula applicable to promotees for fixing the seniority of special recruits enlisted by promotion, so that in the matter of seniority all officers recruited from the State Civil Service are placed on the same footing The regulation is not arbitrary nor violative of Articles 14 and 16 of the Constitution.

The seniority of the respondents was fixed in accordance with Regulation 3 (3) of the Special Recruitment Seniority Regulat ons, rule 3 (3) (*b*) of the Regulation of Seniority Rules, and the proviso thereto, and is not open to any challenge.

Cases considered: (1964) 4 S.C.R. 598; (1959) 1 S.C.R. (Supp.) 792.

N. C Chatterjee, Senior Advocate (*A N. Sinha, S. Balakrishnan* and *K. B. Rohtagi*, Advocates, with him), for Petitioner.

Niren De, Solicitor-General of India and *V. A. Seyid Muhammad*, Senior Advocate (*R. H. Dhebar*, Advocate for *R. N. Sachthey*, Advocate, with them), for Respondent No. 1.

B Sen, Senior Advocate (*I. N. Shroff*, Advocate, with him), for Respondents Nos. 2 to 18.

G.R. ——— *Petition dismissed.*

P. Ramakrishnan, J.
28th July, 1967.

V N.R S. Ramaswamy Chettiar *v.* Assistant Engineer, Highways.
W.P.No. 1968 of 1964.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *sections* 18 (4), 18 (6) *and Madras Surveys and Boundaries Act (VIII of* 1923)*—Land claimed to be private one included within the boundaries of road poramboke in survey—Village containing the land, taken over under the Abolition Act—Resurvey operations under the Abolition Act—Land confirmed to be within the road poramboke—Claim of the person in possession of the land—Dispute to be determined by the Board of Revenue—No writ.*

The petitioner applied to the Survey Officer under section 10 (1) of the Madras Survey and Boundaries Act, 1923 complaining that his private land forming the frontage to his house had been erroneously included in 1927, without notice to him, within the boundaries of the road poramboke. The Survey Officer refused to alter the boundary. In the appeal, the Appellate Survey Officer while accepting the case of the petitioner and also holding the view that no notice under section 9 (2) of the Act of 1927 was given to the petitioner, nevertheless referred him to a civil suit. The ground was that as the village which included the land in dispute; was an estate, that was taken by the State under the Abolition Act and under the survey operations carried out under the Abolition Act, the inclusion of the disputed land within the road poramboke was confirmed. Hence the writ petition.

Held, under sections 18 (4) and 18 (6) of the Abolition Act and the subsequent rules framed thereunder, the Board of Revenue has, in the circumstances, the power to decide the question. If the facts are established as claimed by the petitioner that the disputed land is an essential part of his building constituting its frontage and could never form part of the street poramboke, he will be entitled to the appropriate remedy under section 18 (6) of the Abolition Act which he could obtain by an application to the Board of Revenue which had been empowered by the Government to deal with the question. It will not be proper in such circumstances to decide that question by way of writ proceedings in the High Court.

M. S. Venkatrama Iyer, for Petitioner.

J. Kanakaraj, for the Government Pleader on behalf of Respondents.

V.S. ——— *Petition dismissed.*

P.S. Kailasam, J.
1st August, 1967.

Sellappa Goundar *v* State of Madras.
W.P. No. 4318 of 1965.

Land Acquisition Act (I of 1894) (*as amended in Madras*), *sections* 4, 6, 5-*A and* 17 (1) (2) (b) (*ii*), *clause* (c) *and* (4)*—Notification under section* 4, *dispensing with urgency provisions and declaration under section* 6 *simultaneously—Valid—Existence of urgency—Not justiciable—Exceptions—Acquisition for providing house-sites for poor Harijans and section* 17 (2) (b) (*ii*), *clause* (c).

The notification under section 4 (1), the dispensing of the provisions under section 5-A, and the issuing of declaration under section 6 of the Land Acquisition Act can be made simultaneously.

The question whether urgency exists or not is a matter solely for the determination of the Government and it is not a matter for judicial review except in cases

where the order itself suffers from a lacuna or in cases where the Government never applied its mind to the matter or acted *mala fide*.

Where it is clear from the record that the land is required for providing dwelling houses for Harijans who are without houses and are poor, the requirement under clause (*c*) of sub-section (2) (*b*) (ii) that the land can be acquired under section 17 (2) for providing house-sites for the poor is satisfied Hence the contention that the notification requiring the lands for the purpose of providing the Harijans with house-sites is not one contemplated under section 17 (4) of the Act and therefore the notification under section 4 (1) and the declaration under section 6 which states that the land is required as house-sites for Harijans are illegal has to be rejected.

Decisions in A.I.R. 1965 Mad. 328, W.P. No. 795 of 1962 and W.P No. 505 of 1961, disagreed with

V. P. Raman for *N. R. Chandran*, for Petitioners

T Selvaraj, for Government Pleader on behalf of Respondents.

V.S. ——— *Petition dismissed*.

M M. Ismail, J.
15th December, 1967.

Ganesh Babu *v* K.S. Radhakrishnan.
S A No. 49 of 1964.

Insolvency—Father adjudged insolvent—Father's interest (undivided share in the Hindu joint family) vests in the Official Receiver—Purchase of that interest by decree-holder—Sons born subsequent to adjudication—Rights of—Whether acquire any interest in their father's share vested in the Official Receiver.

Mesne profits—Purchaser of undivided interest—Right to mesne profits—Not entitled to for any period anterior to the date of allotment of specific share in the property.

In the light of the decisions, I.L.R 59 Mad. 770 and A I.R 1947 Mad. 372, the position is clear that the present appellants who were born subsequent to the adjudication of the fourth respondent as insolvent did not acquire any right in the interest which has become vested in the Official Receiver even before their birth. Therefore, the contention of the appellants that the first respondent herein had acquired only 1/12 share in the property under the purchase fails, with the result the decree for partition passed by the Courts below is correct and upheld.

In view of the decisions of the Supreme Court (1953) 2 M L J. 789 and (1966) 1 S C.R. 628, it is clear that the first respondent is not entitled to mesne profits for any period anterior to the date when a specific share in the property was allotted to him In this case it is admitted that the final decree was passed on 9th September, 1963. Consequently the first respondent can be said to have been allotted a specific share in the property only from that date, with the result that he will be entitled to mesne profits only from that date.

M. A. Sathar Sayeed and *A. Ramanathan*, for Appellants.

P. S. Balakrishna Ayyar and *P S. Ramachandran*, for 1st Respondent.

S.V.J. ——— *Second Appeal allowed to the limited extent with regard to the award of mesne profits; in other respects, dismissed. No leave.*

P. Ramakrishnan, J.
20th December, 1967.

V S Raju Naidu *v.*
Commissioner of Civil Supplies.
W P.No. 1383 of 1965.

Rice Milling Industry (Regulation) Act (1958), *sections* 3 (1) *and* 6—*Rice mill run by petitioner under a licence granted by a Panchayat —Later State Order requiring licence—No licence taken under the State Order—Subsequent Central Act requiring licence, repealing State Order—Existing rice mill—Definition—Not to mean a rice mill previously having a licence—Writ allowed*

The petitioner has been running a rice mill under a licence granted by the Panchayat by its resolution dated 12th September, 1954 The Madras Rice Mills Licensing Order, 1955, was published in the Gazette on 26th January, 1955 requiring a licence for milling rice The petitioner on account of ignorance did not obtain a licence under the Order. Then the Central Act, the Rice Milling Industry (Regulation) Act, 1958, received the assent of the President on 18th May, 1958, and the Central Act repealed the State Order The petitioner applied under section 6 of the Central Act for a licence on the basis that his mill was an existing rice mill. The Board of Revenue rejected the application on the ground that as the mill was run previously without a licence In a writ petition filed by the petitioner,

Held, the petitioner was entitled to the grant of the licence.

There is nothing in the Act to put any qualification in the definition of 'existing rice mill' in section 3 (*b*) so as to make that definition applicable only to rice mills which had, at the commencement of the Act, been operating under a permit granted by the State under the Licensing Order, 1955. The petitioner would be eligible by reason of his owning an existing rice mill, for grant of licence under section 6 (1) without an examination of the question whether he was in possession of a licence under the State Order before the Central Act came into force. To require that an existing rice mill means a mill that had a licence, would amount to importing words into the section.

R. Kunchithapadam, for Petitioner.

S. T. Ramalingam, for the Government Pleader on behalf of Respondent

V S. *Petition allowed.*

P.S. Kailasam, J
22nd December, 1967.

K. Venkatachalam *v.*
The Management of Ashok Leyland, Ltd.
W P.Nos 2096 and 2531 of 1966.

Industrial Dispute—Resort to contract system of employment—Convoy leaders employed for delivering passenger and lorry chassis to dealers throughout India—Intermittent work—Waiting for 3 to 6 weeks for the next chance—Resort to contract system.

The Management had sixty two convoy leaders working under them for the purpose of delivering passenger and lorry chassis to dealer throughout India. A short distance convoy leader will have to wait for three weeks for his next chance and a long distance convoy driver will have to wait for six weeks. During this period no work is provided by the management and no payment is made The management sought to resort to contract system. Hence the reference.

Held, the decision of the management to resort to contract system cannot be assailed.

The question under what circumstances an employer would be justified in resorting to contract system has to be decided on the merits of each case.

Where the work is intermittent and the convoy leaders have to wait for three or six weeks for work depending upon the distance of the route, and during the period they are not paid, and the work was confined only to about 10 to 12 days in a month,

and it would not be feasible to engage some convoy leaders on permanent basis or absorb some of them permanently, as the convoys will have to be moved without any delay the resort to contract system cannot be assailed

B. R. Dolia of *M/s. Aiyer & Dolia*, *G Venkatraman* and *V. C. Srikumar*, for Petitioners.

V. K. Thiruvenkatachari for *M/s. King & Patridge*, for Respondent No. 1.

V.S. ——— *Petition dismissed.*

P. Ramakrishnan, J. K. Dakshinamoorthy *v.*
1st January, 1968. District Signal Telecommunication Engineer.
W P. No. 2866 of 1965.

Railway Protection Force Act (*XXIII of* 1957), *section* 13 *and rule* 18 *of the Rules—Railway employee in a workshop—Searches during employee leaving the workshop—Normal administrative duty only—Railway property found on the person —No compliance with searches made under the Act, necessary—Charge and enquiry against the workman—Right to be assisted by another workman—Valuable right—Discretion to withhold grant of such right—Liable to be examined by the Court—Conduct and Discipline Rules, Rule* 1712

As part of the administrative duties of those in-charge of the workshop, the employees leaving the workshop would be searched to ensure that no property of the railway workshop was concealed in their person and in the course of such a search, according to the charge framed against the petitioner, certain railway property was found in his possession. It will be unnecessary to import to such searches which are made as part of the ordinary administrative security of the Railway workshop premises, the principles laid down in the Railway Protection Force Act and the Rules framed thereunder which are designed for an entirely different purpose namely, to enable the Railway Protection Force to perform their statutory duties, under the Act and the Rules, as an adjunct to the police force of the country.

It is not possible to say categorically that the right to have a defence helper's services to assist a delinquent officer in the departmental enquiry under rule 1712 is an absolute right. Equally, it is not possible to assert that the right to afford the defence helper's services is wholly discretionary and that the Enquiring Authority can give permission or refuse permission for a helper's services at his discretion. The more proper way to interpret the rule, is to hold that the right to have another person's services to assist at a departmental enquiry is a valuable right and it is this valuable right that has been recognised in rule 1712. If in any particular case that right has been withheld the Court would be entitled to examine at the instance of the aggrieved subordinate, whether that right has been withheld for valid reasons or not.

In the instant case the Enquiry Officer had afforded the right to the delinquent workman but at the subsequent stage of the enquiry when the helper could not be present because he could not be released from the department where he was employed the Enquiry Officer concluded the enquiry without the presence of the helper. The enquiry will have to be heard again.

P. Anantan Nair for *P. N. George* and *Miss. P. Shanta*, for Petitioner.

S. K. L. Rattan, for Respondents.

V.S. *Petition allowed.*

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[SUPREME COURT.]

J. C. Shah, S. M. Sikri and *J M. Shelat, JJ.*
20th October, 1967

Sri Ram Vilas Service Ltd.
Kumbakonam *v.*
M/s. Raman and Raman (P.) Ltd.
C.A.No. 258 of 1967.

Motor Vehicles Act (*IV of* 1939), *section* 57 (3)—*Amending Act III of* 1964, *section* 48 (3) (*xxi*)—*Madras Motor Vehicles Rules, rule* 208.

It seems to us that the High Court erred in holding that section 48 (3) (*xxi*) of the Act, as amended, by itself gave power to the Regional Transport Authority to vary the route within certain limits. This power, in our view, would be exercisable only if a condition to that effect is put in the permit In the case of the appellant we saw the permit and what it contained was a condition similar to the condition mentioned in section 48 (3) (*xxi*) before its amendment by Act III of 1964. Therefore, for the purpose of this appeal we must treat section 48 (3) (*xxi*), as amended, as non-existent. If section 48 (3) (*xxi*), as amended, is treated as non-existent, then there can be no difficulty in coming to the conclusion that no limitation had been placed on the powers of the Regional Transport Authority in respect of the grant of applications for variation of, the route. The order of the Regional Transport Authority cannot, therefore, be challenged as being beyond its jurisdiction.

Another question that was debated before us was whether rule 208 of the Madras Motor Vehicles Rules, extracted above, confers powers on a Transport Authority to vary permits or whether it is merely a procedural rule. It seems to us that as the Act stands at present, rule 208 does confer power on a Transport Authority to vary all kinds of permits or conditions attached therein. This power is exercised on an application made in writing by the holder of any permit.

It follows from the above reasoning that the Regional Transport Authority had the authority under rule 208 to vary the permit and nothing contained in section 48 (3) (*xxi*) limited its power in respect of the distance covered by the variation in this case.

We may mention that it was argued before us that section 57 (8) is not merely procedural but also implies a power to receive applications and vary the conditions in a permit. This may be so, but it is not necessary to decide in this case because in Madras rule 208, clearly confers power on the Transport Authority to vary the conditions of the permit.

In the result the appeal is allowed and the judgment of the High Court set aside. The appellant will have the costs incurred in this Court.

G. R. *Appeal allowed.*

[SUPREME COURT.]

M. Hidayatullah,
V. Bhargava and
C. A. Vaidialingam, JJ
26th *October*, 1967.

Ram Adhar Singh *v.*
Ramroop Singh.
C.M P. No. 2631 of 1967 (Application for abatement of appeal),
In C.A.No. 691 of 1966.

U.P. Consolidations of Holdings Act 1953 (*V of* 1954) (*amending Act XXI of* 1966), *section* 5—*Abatement of a suit*—Ultra vires *of the Constitution.*

We have referred only to some of the salient provisions of the Act ; and they will clearly show that the subject-matter of the dispute, between the parties in this litigation, are all matters falling for adjudication, within the purview of the authorities, constituted under the Act. In fact, clause (*b*), of sub-section (2) of section 5 of the Act, as it now stands, also lays down that the abatement of the proceedings under clause (*a*), shall be without prejudice to the rights of persons affected, to agitate the right or interest in dispute in the said suits or proceedings, before the appropriate consolidation authorities under the Act and in accordance with the provisions of the Act and the Rules made, thereunder.

Having due regard to the nature of this litigation, and the provisions of the Act, we are satisfied that the amended section 5 of the Act applies to these proceedings. If that is so, an order has to be passed that the suit, out of which these proceedings arise, stands abated.

That takes us on to the second contention, of Mr. Gupte, *viz.*, that the provisions of the amended section 5 are *ultra vires*, inasmuch as the State Legislature has enacted a provision which impinges upon the jurisdiction of this Court. The learned Counsel has no doubt referred us, to the various entries in the Lists in the Seventh Schedule to the Constitution; but we are not satisfied that there is any merit either, in this contention. The State Legislature has not passed any legislation affecting the jurisdiction of this Court. On the other hand, what the State Legislature has done is only to make provision in respect of matters, within its jurisdiction and to declare that a suit, instituted in a Court, within its area, has abated. The position, ultimately, is that this Court takes note of a subsequent event, *viz.*, the passing of the Amending Act, and the amendment of section 5 thereby, by the State Legislature, and, on that basis, it holds that the suit, out of which these proceedings arise, stands abated. Therefore, there is no question of the Legislature of the State having passed any legislation affecting the jurisdiction of this Court.

The result is that C.M.P. No. 2631 of 1967 is allowed and it is declared that C.A. No. 691 of 1966 has abated, under the amended section 5 of the Act. The civil appeal is also disposed of, as having abated, for the reasons given by us, when dealing with the Civil Miscellaneous Petition. Parties will bear their own costs, in both the matters.

F. C. Agrawala and *P. C. Agrawala*, Advocates, for Petitioner.

S. V. Gupte, Senior Advocate, (*B. Datta*, Advocate with him), for Respondent No. 1.

G. R. ——— *Order accordingly*

[SUPREME COURT.]

K. N. Wanchoo, C. J.
R. S. Bachawat,
V. Ramaswami,
G. K. Mitter and *K S. Hegde, JJ.*
9th November, 1967.

Union of India *v.*
P. K. Roy.
C.A. No. 618 of 1966.

States Reorganizations Act (XXXVII of 1956), *section* 9 (1), *section* 115—*Government Letter No* 62/22/56-*SR*-11 *dated 3rd April*, 1957—*Principle for determining equation of posts and relative seniority—Article* 162 *of the Constitution—Item* 42 *in List II of the 7th Schedule of the Constitution—Article* 309 *and Article* 4 *of the Constitution—Meaning of* "delegatus non-potest delegare."

In our opinion, the procedure adopted in this case does not contravene the provisions of section 115 (5) of the said Act, because it was the Central Government which laid down the principles for integration, it was the Central Government which considered the representations and passed final orders, and both the preliminary and final gradation lists were prepared and published by the State Government under the direction and with the sanction of the Central Government.

It is not disputed that the provisional and the final gradation lists were prepared by the State Government on the principles laid down by the Central Government itself subject to one change in the matter of determining seniority and the provisional gradation list was sent for approval of the Central Government together with representations made by the officers concerned for being dealt with and decided upon by the Central Government. The principle of the maxim "*delegatus non-potest delegare*" has therefore no application to the present case. The maxim deals with the extent to which a statutory authority may permit another to exercise a discretion entrusted by the statute to itself. It is true that delegation in its general sense does not imply a parting with statutory powers by the authority which grants

the delegation, but points rather to the conferring of an authority to do things which otherwise that administrative authority would have to do for itself If, however, the administrative authority named in the statute has and retains in its hands general control over the activities of the person to whom it has entrusted in part the exercise of its statutory power and the control exercised by the administrative authority is of a substantial degree, there is in the eye of law no "delegation" at all and the maxim "*delegatus non potest delegare*" does not apply (See *Powler (John) & Co., Leads*) v. *Duncan*, L.R. (1941) Ch. 450). In other words, if a statutory authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own. In the context of the facts found in the present case we are of opinion that the High Court was in error in holding that there has been an improper delegation of its statutory powers and duties by the Central Government and that the final gradation list dated 6th April, 1962 was therefore *ultra vires* and illegal Even on the assumption that the task of integration was exclusively entrusted to the Central Government, we are of the opinion that the steps taken by the Central Government in the present case in the matter of integration did not amount to any delegation of its essential statutory functions. There is nothing in section 115 or 117 of the said Act which prohibits the Central Government in any way from taking the aid and assistance of the State Government in the matter affecting the integration of the services. So long as the act of ultimate integration is done with the sanction and approval of the Central Government and so long as the Central Government exercises general control over the activities of the State Government in the matter, it cannot be held that there has been any violation of the principle "*delegatus so non potest delgare*" For instance, it was observed by this Court in *Pradyat Kumar Bose* v. *The Hon'ble The Chief Justice of Calcutta High Court*, (1955) S C.J 259 : (1955) 2 S C.R. 1331, 1345.

We accordingly reject the argument of Mr. Asoke Sen on this aspect of the case and hold that the High Court was in error in holding that there was an improper delegation of its statutory power by the Central Government under section 115 (5) of the said Act.

In view of the special circumstances of the present case we think that the respondents were entitled to an opportunity to make a representation with regard to the two points urged by Mr Asoke Sen before the final gradation list was published. As no such opportunity was furnished to the respondents with regard the two points urged by Mr Asoke Sen before the final gradation list dated 6th April, 1962, so fas as category No 6 is concerned, is *ultra vires* and illegal and that part of the notification alone must be quashed by grant of a writ in the nature of *certiorari*. The rest of the notification of the State Government dated 6th April, 1962 with regard to other categories will stand unaffected So far as category No 6 is concerned the Central Government is directed to give an opportunity to the respondents to make a representation in regard to the two points mentioned in this paragraph and thereafter take steps to finalise and publish the list in accordance with law.

Niren De, Solicitor-General of India and *Dr. V A Seyid Muhamad*, Senior Advocate, (*R N. Sachthey*, Advocate for *R H Dhebar*, Advocate, with them), for Appellants.

A. K Sen, Senior Advocate, (*Rameshwar Nath* and *Mahinder Narain*, Advocates of *M/s. Rajinder Narain & Co.*, with him), for Respondents Nos. 1, 3, 6, 10, 12 and 13.

G. R. *Appeal partly allowed.*

[SUPREME COURT.]

J. C Shah, S. M. Sikri and *J. M. Shelat, JJ*

9th November, 1967.

The Century Spinning & Manufacturing Co., Ltd. *v* The Disrict Municipality of Ulhasnagar. C As. Nos. 2014, 2565, 2566 and 2567 of 1966.

Bombay District Municipal Act (*III of* 1901); *sections* 4 *and* 7—*House, Tax Rules under sections* 59 *to* 63.

In our view, the assessing officer was clearly wrong, for, what he did was to apply the definition of a building as given in section 3 of the Act instead of the definition in Rule 3 (7). That he was not right in doing as Rule 3 (9) excludes the application of that definition. He was bound by the definition of building as given in section 3 of the Act instead of the definition in Rule 3 (7) and in view of Rule 1 (*ii*) he could base his assessment only on the annual letting value of a building as provided by Schedule I and not the open lands. He was also not entitled to rely upon the words "whatsoever form any property" in Rule 1 (*ii*) as those words go with the previous words "buildings or houses or shops or huts" and do not include open lands to mean buildings or houses. The reasoning of the High Court regarding the objection to the inclusion of the open land in the assessment also does not appear to be correct. Though the High Court on a consideration of the Rules held that the Municipality was not authorised to levy the rate on open lands it observed that if an open land formed an adjunct of the factory building it would constitute an amenity, that in that event a hypothetical tenant would pay a higher rent taking such an amenity into consideration, that the assessing authority would be entitled in such a case to take into account such an additional amenity, that there could be no objection, if he did so and that to decide whether the assessing officer had valued the open land as an adjunct to the factory building or separately as open land evidence would have to be led and scrutinised and therefore it would not be possible to decide such a question in a Writ Petition. With respect, it is not possible to agree with the High Court on this part of its judgment, firstly, because the open lands have been separately valued and secondly because the assessing officer in his said order has in clear terms repelled the appellants, objection to his taxing the open lands by relying on the definition of building in section 3 of the Act as including open lands when bounded by compound walls and not on the ground that they formed an adjunct of the factory buildings and were an amenity or additional advantage which a hypothetical tenant would take into account when offering rent. In our view the assessing officer was not entitled to include the open lands while rating the factory buildings of the appellant companies as such inclusion was *ultra vires* the Rules and therefore invalid.

The appeals are partly allowed and the judgment and order passed by the High Court are set aside to the extent that the assessment on open lands in each of these appeals is declared *ultra vires* the Rules and therefore invalid. We also set aside the order of costs passed by the High Court against the Century Mills. So far as these appeals are concerned the parties will bear their own costs.

S V. Gupte, Solicitor-General of India, (*S A Shroff* and *P C. Bhartari*, Advocates and *Ravinder Narain* and *O C. Mathur*, Advocates of *M/s. J B. Dadachanji & Co.*, with him), for Appellant (in C A. No. 2014 of 1966).

S. T. Desai, Senior Advocate, (*A B. Diwan*, Advocate and *Ravinder Narain* and *O C. Mathur*, Advocates of *M/s. J. B Dadachanji & Co.*, with him), for Appellant (in C A. No 2565 of 1966).

A B. Diwan, Advocate and *Ravinder Narain* and *O. C Mathur*, Advocates of *M/s. J. B Dadachanji & Co.*, for Appellants (in C As Nos. 2566 and 2567 of 1966).

A. K. Sen, Senior Advocate (*N H Gursohani*, *Prahlalad G Advani* and *N. N. Keswani*, Advocates, with him), for Respondents Nos. 1 to 5 (In C A. No. 2014 of 1966) and the Respondents (in C. As. Nos. 2565 to 2567 of 1966).

S. P. Nayar, Advocate for *R. H. Dhebar,* Advocate, for Respondent No. 6 (In C.A. No. 2014 of 1966).

G. R. *Appeals Partly allowed.*

[SUPREME COURT.]

K. N Wanchoo, C J, M Hidayatullah, J. C Shah, R S Bachawat, V. Ramaswami, G. K Mitter and *K S Hegde, JJ.*
10th November, 1967.

Mohd. Yaqub v. The State of Jammu and Kashmir, W Ps Nos. 109 to 114, 117, 118, 120, 121, 128 to 133, 142, 143, 186, 190 and 191 of 1967.

Defence of India Rules (1962), *rule* 30 (1) (*b*)—*Articles* 12, 13 *of the Constitution of India* (1950), *Articles* 14, 166, 352 *and* 359.

We must say with greatest respect that it is rather difficult to understand how an order under Article 359 which suspends the enforcement of a fundamental right can be tested under that very fundamental right It is true that there is a distinction between Article 358 and Article 359 (1). Article 358 by its own force suspends the fundamental rights guaranteed by Article 19, Article 359 (1) on the other hand does not suspend any fundamental right of its own force but it gives power to the President to suspend the enforcement of any fundamental right during the period of Emergency. But that cannot mean that an order passed under Article 359 (1) suspending the enforcement of a particular fundamental right has still to be tested under the very fundamental right which it suspends. That would in our opinion be arguing in a circle and make Article 359 completely nugatory. It seems that the majority in *Ghulam Sarwar* v *Union of India,* (1967) 2 S C.R. 271 : A.I R. 1967 S C. 1335, case was also conscious of the fact that the reasoning on which it came to the conclusion that an order made under Article 359 could be tested under Article 14, though it suspended that Article, was open to the criticism that it was an argument in a circle The argument was however met by making a distinction between the order and the effect of that order and it was observed that if the order did not violate Article 14 it could validly take away the right to enforce the fundamental right under Article 14 With greatest respect it is difficult to appreciate this reasoning and the distinction on which it is based. It seems to us that if Article 359 is to have any meaning at all and is not to be wiped out from the Constitution an order passed thereunder suspending a fundamental right cannot possibly be tested under that very fundamental right which it suspends. If that were permissible no order under Article 350 could really be passed. If Article 359 is not to be rendered nugatory, it must be held that an order passed thereunder cannot be tested under the very fundamental right the enforcement of which it suspends We must therefore respectfully differ from the view taken in *Ghulam Sarwar's case,* (1967) 2 S C R. 271 : A.I R. 1967 S.C 1335, and hold that an order passed under Article 359 (1) cannot be tested with the aid of Article 13 (2) under that very fundamental right the enforcement of which it suspends. There is therefore no force in the first point raised on behalf of the petitioners.

Lastly, it is urged that the orders in these cases were *mala fide* This has been denied on behalf of the State No grounds have been shown which may lead us to the conclusion that the fresh orders which were passed were *mala fide.* The necessity for fresh orders arose because the review was not made in accordance with the manner indicated by this Court in *P. L. Lakhanpal* v. *Union of India,* A.I.R. 1967 S.C. 1507. The fresh order that was made was on the same facts and must in the circumstances be held to be valid in view of the judgment of this Court in *Jagdev Singh* v. *State of Jammu and Kashmir,* W.P. No. 69 of 1967, decided on 14th August, 1967.

M. K. Ramamurthi, Advocate, *amicus curiae,* for Petitioners (In W.Ps. Nos. 109 142 and 143 of 1967).

S. Shaukat Hussain, Advocate, for Petitioners (In W.Ps. Nos. 110 to 114 and 118 of 1967).

Janardan Sharma, Advocate, *amicus curiae*, for Petitioners (In W.Ps. Nos. 117, 120 and 121 of 1967).

R C. Prasad, Advocate, *amicus curiae*, for Petitioners (In W Ps. Nos 128 to 133 of 1967).

M K. Ramamurthi and *Vineet Kumar*, Advocates, for Petitioners (In W Ps. Nos. 186, 190 and 191 of 1967).

C K. Daphtary, Attorney-General for India (*R. H Dhebar* and *S. P. Nayar*, Advocates, with him), for Respondent (In W Ps Nos. 109, 142 and 143 of 1967).

G R. Rajagopaul, Senior Advocate (*R H Dhebar* and *S. P. Nayar*, Advocates, with him), for Respondent (In W P No. 110 of 1967).

R.H Dhebar, R Gopalakrishnan and *S P Nayar*, Advocates, for Respondent (In W Ps Nos. 111 to 114, 117, 118, 120, 121, 128 to 133, 186, 190 and 191 of 1967).

G.R. ——— *Petition dismissed.*

[SUPREME COURT].

S.M. Sikri, J M. Shelat and *K. S. Hegde, JJ* 27*th November*, 1967.

Munshi Ram *v.* The Delhi Administration. Crl A No. 124 of 1965.

Penal Code (*XLV of* 1860), *sections* 447, 324 *read with sections* 49 *and* 148—*Criminal Procedure Code* (1898), *section* 342—*Displaced Persons Evacuee Property Act* 1954—*Right of private defence of property*

It is true that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner. But stray or even intermittent acts of trespass do not give such a right against the true owner The possession which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period and acquiesced in by the true owner A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than necessary Such entry will be viewed only as a resistance to an intrusion upon possession which has never been lost. The persons in possession by a stray act of trespass, a possession which has not matured into settled possession, constitute an unlawful assembly, giving right to the true owner, through not in actual possession at the time to remove the obstruction even by using necessary force.

From the proved facts, it is evident that P Ws 17 and 19 had gone to the field with their friends, P W 19 being armed with a deadly weapon, with a view to intimidate Jamuna and to assert their possession. Therefore they were clearly guilty of criminal trespass They also constituted an unlawful assembly.

On the basis of the proved facts it cannot be said that the appellants had exceeded their right of private defence.

In the result, this appeal is allowed, the conviction of the appellants is set aside and they are acquitted.

Cases considered . A I.R 1927 Mad 97, C A No 145 of 1965, decided on 9th November, 1967, (1963) 3 S C R 489, 50 Crl L J. 868, I L R. 1955 Hyd. 406; A I.R 1943 Mad. 590

Bhagwati Lal and *Kartar Singh Suri*, Advocates, and *F. C Agrawala*, Advocates for *P C Agrawala*, Advocates for Appellants

R. N. Sachthey, Advocate for Respondent.

G R ——— *Appeal allowed.*

[SUPREME COURT].

S.M. Sikri, J M Shelat and K. S Hegde, JJ
1st December, 1967.

Suleman Rahiman Mulani *v.* The State of Maharashtra.
Crl A.No. 50 of 1965.

Penal Code (XLV of 1860), section 304-A read with sections 3, 5, 89, 112 *of the Motor Vehicles Act (IV of* 1939) *and section* 201 *read with sections* 5 *and* 89 *of the Motor Vehicles Act*

The scope of section 304-A, Penal Code came to be considered by this Court in *Kurban Hussein Mohammeddali Rangawalla* v. *State of Maharashtra,* (1965) 2 S.C.R. 622, the ratio of that decision governs the facts of the present case.

In the present case, the proximate cause of the accident is not clear The possibility of the accident having been caused due to the fault of the deceased cannot be made out . The question whether appellant No. 1 was proficient in driving a jeep or not does conclude the issue. His proficiency in driving might furnish a defence which a learner could not have but the absence of proficiency did not make him guilty. The only question was whether, in point of fact he was not competent to drive and his incompetence was the cause of death of the person concerned.

On behalf of the prosecution reliance was placed on the decision of this Court in *Jugganhkan* v. *State of Madhya Pradesh,* (1965) 1 S C R. 14. The ratio of that decision does not apply to the facts of the present case In that case, it had been conclusively proved that the rash or negligent act of the accused was the cause of the death of the person concerned.

For the reasons mentioned above, the conclusions of the Courts below that on the basis of the facts found by them the first appellant could have been held guilty under section 304-A, Indian Penal Code cannot be agreed to. His appeal is allowed From that finding, it follows that the second appellant could not have been convicted under section 201, Indian Penal Code

In the result, the second appellant's appeal is allowed in full and he is acquitted of all the charges The first appellant's appeal is allowed in part and his conviction under section 304-A is set aside. But his other convictions are sustained, namely, his convictions under section 3 read with section 112 of the Motor Vehicles Act (IV of 1939) and section 89 of the same Act, for which offences only a sentence of fine had been imposed upon him.

Other cases considered: 4 B L R. 679; (1953) S C R. 94.

A S. R Chari, Senior Advocate (*O P Malhotra, V. N Ganpule* and *P. C. Bhartari,* Advocates and *O C Mathur,* Advocate of *M/s. J B. Dadachanji & Co.* with him) for Appellants.

M. S. K. Sastri and *S. P. Nayar,* Advocates for Respondent.

G.R ——— *Appeal allowed in part.*

[SUPREME COURT.]

S M. Sikri, J M. Shelat, and K. S Hegde, JJ
7th December, 1967.

Konchada Ramamurty Subudhi (dead) *v.* Gopinath Naik.
C.A. No. 372 of 1965.

Civil Procedure Code (V of 1908), *section* 47, *Order* 23, *Rule* 3—*Orissa House and Control Act (XXXI of* 1958), *hereinafter referred to as the Act—Meaning of word 'rent'.*

Coming to the terms of the compromise, it is true, as stressed by the learned Counsel for the respondent, that the word "rent" has been used, but the word "rent" is not conclusive, for as observed by this Court in *State of Punjab* v. *British India Corporation Ltd* , (1964) 2 S C.R. 114-123 : (1964) 1 S C J 571 : A I.R. 1963 S.C 1459. "In its wider sense rent means any payment made for the use of land or buildings and thus includes the payment by a licensee in respect of

the use and occupation of any land or building. In its narrower sense it means payment made by tenant to landlord for property demised to him."

The High Court stressed the fact that a long period of five years was granted to the judgment-debtor for continuation of the possession In our view, the length of the period, in the circumstances, does not militate against the construction that the compromise only created a licence, for the decree-holder apparently had lost in the trial Court and it was only in the Court of Appeal that this compromise was arrived at.

For the aforesaid reasons we hold that the compromise deed did not create a lease Therefore, the judgment-debtor is not a tenant within section 2 (5) of the Act which defines " tenant " to mean " any person by whom or on whose behalf rent is payable for any house and includes every person who, from time to time, derives title under a tenant, or a person continuing in possession after the termination of his tenancy otherwise thanunder the provisions of this Act, and shall include any person against whom a suit ejectment is pending in a Court of competent jurisdiction but not a person against whom a decree or order for eviction has been made by such a Court."

In the result the appeal is allowed, the judgment of the High Court set aside and that of the District Judge restored. The appellants will have their costs incurred in this Court.

B. Parthasarathy and *M S K. Sastri*, Advocates for *M/s J. B. Dadachanji & Co.*, for Appellants.

K. R. Chaudhury, Advocate, for Respondent No. 1.

G R.

Appeal allowed.

[SUPREME COURT.]

R. S Bachawat and *G K Mitter, JJ.*
7th December, 1967

The Associated Hotels of India Ltd *v.* S B Sardar Ranjit Singh.
C A No. 1249 of 1967.

Delhi and Ajmer Rent Control Act (*XXXVIII of* 1952), *section* 13 (1)—*Sub-letting—Application for reception of documents as Evidence*

At the hearing of this appeal, the appellant moved an application for reception of the documents as additional evidence The genuineness of the documents was disputed by the respondent In the Courts below, the appellant made no attempt to prove these documents We found no ground for directing a new trial. Having regard to all these facts, we dismissed the application

We are therefore satisfied that the respondent is entitled to evict the appellant on the ground of sub-letting of the rooms The Courts below held that the appellant had also sub-let several counters, show-cases and garages to various persons We express no opinion on the question whether there was any sub-letting of the counters, show-cases and garages The sub-lettings of the rooms are sufficient grounds of eviction under clauses (*b*) and (*c*) of the proviso to section 13 (1).

It follows that the respondent is entitled to evict the appellant on the grounds mentioned in clauses (*b*) (*i*), (*c*) (*i*) and (*k*) of the proviso to section 13 (1).

A. K. Sen, Senior Advocate (*Rameshwar Nath, P.L Vohra* and *Mahinder Narain*, Advocates of *M/s. Rajinder Narain & Co.*, with him), for Appellant.

Bishan Narain, Senior Advocate (*Radhey Mohan Lal* and *Harbans Singh*, Advocates, with him), for Respondent.

G.R.

Appeal dismissed.

[SUPREME COURT.]
J.C. Shah, V. Ramaswami
and V. Bhargawa, JJ.
8th December, 1967.

Ram Chandra Arya v.
Man Singh.
C.A.No 379 of 1965.

Civil Procedure Code (V of 1908), Order 32, rule 15, Order 21, rules 89 and 90.

This principle can be of no assistance to the appellant in the present case, because, in that case, when the sale was actually held, a valid *ex parte* decree did exist. The sale, having been held in execution of a valid existing decree, was itself valid ; and the only question that came up for decision was whether such a valid sale could be set aside otherwise than by resort to the provisions of rules 89 and 90 of Order 21, Civil Procedure Code. In the present case, the decree, being a nullity, has to be treated as *non est* and, consequently, the sale, when held, was void *ab initio*. In such a case, there is no question of any party having to resort to the provisions of rules 89 and 90 of Order 21, Civil Procedure Code to have the sale set aside. Any claim based on a void sale can be resisted without having that sale set aside.

Referring to L R. 27 I A 216, the Court held, in fact the Privy Council, in very clear words, held that the sale was a nullity and only, at the end, took notice of the fact that, in that particular case before it, the real purchaser happened to be the judgment creditor, so that the interest of a stranger purchaser could not be defeated by him. We are not prepared to read in that judgment any decision that, if the auction-purchaser is not the judgment creditor but a stranger, the sale would be a valid sale, even though it was held in execution of a decree which was void. A sale is void *ab initio* if it is held in execution of a decree which is a nullity and, consequntly, to be treated as non-existent. In the present case, therefore, no rights could be acquired by the purchaser Prabhu Dayal, the father of the appellant, when he purported to purchase the house in execution of the decree against Ram Lal. Ram Lal having died without leaving any heir the property naturally passed by escheat to the Maharaja of Jaipur. That principle is clearly recognised in Hindu Law. Reference may be made to Mulla's Hindu Law, 13th Edition, page 133, para, 59.

J P. Goyal and *Sobhagmaljian*, Advocates, for Appellant.

S. P. Sinha, Senior Advocate (*M I. Khowaja*, Advocate, with him), for Respondents.

G R. *Appeal dismissed.*

[SUPREME COURT]
J.C Shah, V. Ramaswami
and V. Bhargava, JJ
14th December, 1967.

The Board of Revenue
Rajasthan v.
Rao Baldev Singh.
C.A No 454 of 1965

Rajasthan Land Reforms and Resumption of Jagirs Act (VI of 1952) (hereinafter referred as the Act), sections 2 (1), 23, 37, 46, 122, 125 and 136—Definition of Khudkasht.

Reading section 23 of the Act in the context of sections 46 and 47 of the Act it is manifest that an exclusive jurisdiction is conferred upon the Jagir Commissioner to decide the question as to whether any property of the Jagirdar is of the nature of khudkasht and the decision of the Jagir Commissioner on this question is final and cannot be challenged collaterally in a Civil or Revenue Court. It is true that sections 25 and 136 of the Rajasthan Land Revenue Act confer power on the Land Records Officer to decide disputes with regard to the entries in the record of rights or in the annual registers, as the case may be. But neither the Land Records Officer or any other Revenue Courts contemplated by the Rajasthan Land Revenue Act have jurisdiction to enquire into the question whether the property claimed by the Jagirdar is khudkasht within the meaning of section 23 of the Act. The reason is that the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 is a special Act and the general maxim is that a subsequent General Act does not affect a prior special Act by implication, *generalia specialibus non derogant.*

M—N R C

" When the Legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms " *Barker* v. *Edger*, L R 1898 A.C 748. We are accordingly of the opinion that an enquiry under section 23 (2) of the Act was necessary in this case and that the Board of Revenue was right in taking the view that the matter should be referred to the Jagir Commissioner for determining the nature of the property under section 23 (2) of the Act and only after his decision is received should the Commissioner, Bikaner take up the question with regard to the correction of entries under the Rajasthan Land Revenue Act. We consider that the order of the Board of Revenue dated 24th July, 1959 is based on a correct interpretation of the law and the High Court of Rajasthan was in error in setting aside that order.

In our opinion, the Board of Revenue was right in taking the view that the Additional Jagir Commissioner should have followed the procedure prescribed by the statutory rules and the High Court had no justification for setting aside the order of the Board of Revenue dated 8th April, 1960 and 16th July, 1962.

For the reasons expressed we hold that the order of the Rajasthan High Court dated 7th October, 1963 quashing the orders of the Board of Revenue dated 24th July, 1959, 8th April, 1960 and 16th July, 1962 should be set aside and Civil Writ Petition No. 482 of 1962 filed by the Respondents should be dismissed. We accordingly allow this appeal and set aside the judgment of the Rajasthan High Court dated 7th October, 1963, but in the circumstances of the case there will be no order as to costs.

M. C Chagla, K B Mehta and *Miss Indu Soni*, Advocates, for Appellants.

R. K. Garg, D P. Singh and *S.C. Agarwala*, Advocates of *M/s. Ramamurthi & Co.*, and *Shivpujan Singh* and *Anil Kumar Gupta*, Advocates for Respondents.

G. R. —————— *Appeal allowed.*

[SUPREME COURT.]

M Hidayatullah and
C A Vaidialingam, JJ.
14th December, 1967

Laxmipat Choraria *v.*
State of Maharashtra.
Crl-As Nos. 50-52 of 1964.

Penal Code (XLV of 1860), *section* 120-*B—Section* 167 (81) *Sea Customs Act (VIII of* 1878)*—Section* 494, *Penal Code (XLV of* 1860)*—Sections* 118 *and* 132, *Evidence Act (I of* 1872)*—Section* 342-*A, Criminal Procedure Code (V of* 1898).

The case was one under section 120-B of the Indian Penal Code. As the existence of a conspiracy is proved beyond a shadow of doubt Section 10 of the Indian Evidence Act is attracted.

On the whole, we think that if the Court is satisfied that there is no trick photography and the photograph is above suspicion, the photograph can be received in evidence. It is, of course, always admissible to prove the contents of the documents, but subject to the safeguards indicated, to prove the authorship This is all the more so in India under section 10 of the Evidence Act to prove participation in a conspiracy. Detection and proof of crime will be rendered not only not easy but sometimes impossible if conspirators begin to correspond through photographs of letters instead of originals Many conspiracies will then remain unproved because one of the usual methods is to intercept a letter, take its photograph and then to send it on and wait for the reply. But evidence of photographs to prove writing or handwriting can only be received if the original cannot be obtained and the photographic reproduction is faithful and not faked or false. In the present case no such suggestion exists and the originals having been suppressed by the accused, were not available The evidence of photographs as to the contents and as to handwriting was receivable

The last contention that there has been discrimination and violation of Articles 14 and 20 is without substance Reliance was placed on *S. G Jaisinghani* v. *Union of India and others* (1967) 1 L.T J 903: (1967) 2 S.C J 102. A.I.R. 1967 S C. 1427; that the absence of arbitrary power is the first essential of the rule of law and here there is room for selecting one out of several accused to lead accomplice evidence. Reference was made to other cases of this Court where unrestrained power of selection without guide-lines was held to offend Article 14. But the case of the accomplice evidence is different Section 337 of the Code of Criminal Procedure has already been held not to offend Article 14 and the matter of taking accomplice evidence outside section 337 by using section 494 or otherwise is not very different We do not hold that there was any breach of the Constitution in receiving Fthyl Wong's evidence. To hold otherwise would shut out accomplice evidence completely

There is thus no force in the appeals. Mr Jethmalani argued that the High Court was wrong in enhancing the sentences of Balchand and Poonamchand appellants and the sentence of Laxmipat which is the maximum permissible under law was also too severe. Gold smuggling has become one of the major difficulties in maintaining our economic structure. The case evidences an international ring of smugglers In view of this we see no reason to interfere. The appeals will stand dismissed. Appellants to surrender to their bail.

A. K. Sen, Senior Advocate (*R. Jethmalani, Mrs. Jethmalani, Kumar M. Mehta* and *B Parthasarathy,* Advocates, and *J B. Dadachanji,* Advocate of *M/s. J B. Dadachanji & Co* , with him, for Appellants (In Cr A No 50 of 1964)

R Jethmalani, Kumar M. Mehta and *Mrs. Jethmalani,* Advocates and *J B Dadachanji,* Advocate of *M/s. J B. Dadachanji & Co.* for Appellants (In. Cr.As. Nos 51-52 of 1964).

K G. Kandalawala, H R. Khanna, B A Panda, R. H. Dhebar and *S. P. Nayar,* Advocates for Respondent (In all the Appeals).

G R. —— *Appeal dismissed.*

[Supreme Court.]

K N. Wanchoo, C J, R S Bachawat, J.M Shelat, G K Mitter and *C A Vaidialingam, JJ.* 15*th December,* 1967.

Mohanlal Maganlal Thakkar *v.* State of Gujarat. Cr.A No. 105 of 1965.

Penal Code (*XLV of* 1860), *sections* 302, 436, 334, *read with* 149—*Criminal Procedure Code,* (*V of* 1898), *section* 476—*Penal Code* (*XLV of* 1860), *sections* 205, 467, 468 *read with* 113—*Constitution of India* (1950), Article 134 (1) (c), and *Article* 133(1) (c)—*Prevention of Corruption Act* (*II of* 1947), *section* 6 (1).

After discussing Halsbury's Laws of England (3rd Ed) Volume 22, 742-743; (1891) 1 Q B 734, (1877) 3 C.P D 67; (1882) 9 Q B D 621; (1903) 1 K B. 547; (1879) 27 W R 759, 60 I.A. 76; 1958 S C R. 1007; 1947 F C R 180; 1949 F C R 842; (1961) 3 S C R 754; 1950 S C R. 799; (1954) 7 S C R 784; (1966) 3 S C.R 198 and 1952 S C R 28, A.I R. 1960 All 728; the Court held · The aforesaid discussion leads to the conclusion that when the Magistrate ordered the filing of the complaint against the appellant, the parties to that controversy were the State and the applicant and the controversy between them was whether the appellant had committed offence charged against him in that complaint The appeal filed by the appellant before the Additional Sessions Judge was against the order filing the complaint, the controversy therein raised being whether the Magistrate was justified in filing it, that is to say, whether it was expedient in the interest of justice and for the purpose of eradicating the evil of false evidence in a judicial proceeding before the Court. The controversies in the two proceedings were thus distinct though the parties were the same. When the Additional Sessions Judge held that the complaint was justified in respect of the offence under section 205 read with

section 114 and was not justified in respect of the other offences his judgment in the absence of a revision by the State against it finally disposed of that part of the controversy, i e, that the complaint in respect of offences under sections 467 and 468 read with section 114 was not justified When the appellant filed revision in respect of the complaint for the remaining offence under section 205 read with section 114 was not justified. When the appellant filed revision in respect of the complaint for the remaining offence under section 205 read with section 114 the Single Judge of the High Court dismissed that revision His order of dismissal disposed of that controversy between the parties and the proceeding regarding that question as to whether the complaint in that regard was justified or not was finally decided The finality of that order was not to be judged by co-relating that order with the controversy in the complaint, viz, whether the appellant had committed the offence charged against him therein. The fact that the controversy still remained alive is irrelevant. It must consequently be held that the order passed by the High Court in the revision filed by the appellant was a final order within the meaning of Article 134 (1) (c).

Even so, the next question is whether this was a case where the High Court could have granted the certificate In *Haripada Dev* v. *The State of West Bengal*, (1956) S C R 639· (1956) 2 M L J (S.C) 65: (1956) S C J. 701. A I R. 1956 S C. 757; it was held that the High Court had no jurisdiction to grant a certificate under Article 134 (1) (c) on a mere question of fact In *Babu* v *State of Uttar Pradesh*, (1965) 2 S C R 771 (1966) 1 S C J 287 : (1966) M L J (Crl) 215 A I R 1965 S C 1467; it was again observed that the Constitution does not confer ordinary criminal jurisdiction on this Court except in cases covered by clauses (a) and (b) of Article 134 which provides for appeals as of right The High Court before it certifies the case in cases not covered by clauses (a) and (b) of Article 134 must be satisfied that it involves some substantial question of law or principle. Only a case involving something more than mere appreciation of evidence is contemplated by the Constitution for the grant of a certificate under Article 134 (1) (c) which alone applies in this case The question in the revision application before the High Court was whether the Magistrate was right in his conclusion that offences referred to in section 195 (1) (b) or (c) of the Code of Criminal Procedure appeared to have been committed in or in relation to a proceeding in his Court and that it was expedient in the interest of justice to file a complaint Obviously, this is a question of fact and involves no substantial question of law or principle. It seems that the certificate was issued because it appeared as if the Single Judge in the language in which he passed his order meant that the High Court as a matter of law would never exercise its revisional jurisdiction in such cases. The order, however, cannot mean that the High Court cannot entertain and decide revision applications in respect of orders passed under section 476 of the Code of Criminal Procedure. What the Single Judge presumably meant was that the question being one of fact only, the High Court would not interfere particularly where there is a concurrent finding both of the Magistrate and the Sessions Judge in appeal The question being one of facts only and there being no substantial question of law or principle the High Court was not competent to certify the case under Article 134 (1) (c)

N. N. Keswani, Advocate, for Appellant.

G. L. Sanghi and *S. P. Nayar*, Advocates, for Respondent.

G. R. *Appeal dismissed.*

[SUPREME COURT.]
K. N. Wanchoo, C.J.
R. S. Bachawat,
J. M. Shelat,
G. K. Mitter and
C. A. Vaidialingam, JJ.
8th January, 1968.

O. N. Mohindroo *v.*
The Bar Council of Delhi.
C.A. No. 240 of 1967.

Advocates Act (XXV of 1961) *(hereinafter called the Act), sections* 35 (3) (*c*), 37, *and* 38 *of the Act—Article* 138(2), *List I Entries* 77 *and* 78 *and List III Entry* 26 *of the Constitution of India* (1950)—*Articles* 136 *and* 145 (1) (*b*) *of the Constitution—Powers and Jurisdiction of the High Courts and the Supreme Court—Government of India Act,* 1935—*Order* 5, *rule* 7 *of the Supreme Court Rules.*

Thus, so far as the constitution and organisation of the Supreme Court and the High Courts are concerned, the powers is with Parliament. As regards the other Courts, Entry 3 of List II confers such a power on the State Legislatures. As regards jurisdiction and powers, it is Parliament which can deal with the jurisdiction and powers, of the Supreme Court and the admiralty jurisdiction. Parliament can confer jurisdiction and powers on all Courts in matters set out in List I and List III where it has passed any laws. But under the power given to it under Entry 3 in List II, a State Legislature can confer jurisdiction and powers on any of the Courts except the Supreme Court in respect of any statute whether enacted by it or by Parliament except where a Central Act dealing with matters in Lists I and III otherwise provides. That these entries contemplates such a scheme was brought out in *State of Bombay v. Narothamdas*, (1951) S C J. 103: (1951) S C.R. 51, where it was contended that the Bombay City Civil Court Act, (XL of 1948) constituting the said Civil Court as an additional Court was *ultra vires* the Provincial Legislature as it conferred juridiction on the new Court not only in respect of matters in List II of the Seventh Schedule of the Government of India Act, 1935 but also in regard to matters in List I such as promissory notes in Item 8 of List I.

The power to legislate in regard to persons entitled to practice before the Supreme Court and the High Courts is thus excluded from Entry 26 in List III and is made the exclusive field for legislation by Parliament only (Re: *Lily Isabel Thomas*, (1964) 6 S C R 229 at 236; A I R. 1964 S C 855), and also *Durgeshwar* v. *Secretary, Bar Council, Allahabad,* A I R 1954 All. 728 Barring those entitled to practise in the Supreme Court, and the High Courts, the High Courts, the power to legislate with respect to the rest of the practitioners would still seem to be retained under Entry 26 of List III. To what extent the power to legislate in regard to the legal profession still remains within the field of Entry 26 is not the question at present before us and therefore it is not necessary to go into it in this appeal.

Section 38 confers no doubt a right of an appeal on a person aggrieved by an order passed under sections 36 and 37 and the appellant does not have to obtain any Special Leave under Article 136. But the fact that under rule 7 the appeal is placed for preliminary hearing and is liable to be disposed of at that stage does not mean that the content of the right of appeal under section 38 is in any way curtailed as the party filing the appeal has to be heard on all points raised by him therein. There is, therefore, no substance in the argument that rule 7 contravenes section 38, and is therefore *ultra vires* the section. On the express terms of Article 145 (1) (*b*), the rule is within the rule-making power of this Court as it merely lays down how and in what manner an appeal filed under section 38 is to be dealt with and does not deal with or affect the right of appeal. The validity of the rule cannot, therefore, be impeached. The decision in *Prem Chand Garg* v. *Excise Commissioner,* (1963) 1 S C R (Supp) 885: A I R. 1963 S C. 996; cannot assist the appellant. In that decision rule 12 of Order 35 of the Supreme Court Rules was declared void in so far as it related to the furnishing of security on the ground that the right

to move the Supreme Court under Article 32 was absolute and the rule by providing security for costs impaired such an absolute right. Furnishing of security in the case of persons without means to do so would obviously obstruct such persons from vindicating their rights under Article 32 and would, therefore, curtail the right under that Article. That obviously is not so in the case of the rule with which we are concerned in this appeal. The contention, therefore, that rule 7 curtails the right of appeal under section 38 or contravenes that section must be, rejected.

Appellant in person

Avadh Behari, Advocate, for Respondents Nos. 1 and 2.

P. Ram Reddy, Senior Advocate, (*A. V. Rangam*, Advocate with him), for Respondent No. 3.

Purshottam Trikamdas, Senior Advocate, (*I. N. Shroff*, Advocate with him), for Respondent No. 4.

Purshottam Trikamdas, Senior Advocate, (*S. P. Nayar*, Advocate with him), for Respondent No. 5.

G. R. *Appeal dismissed.*

[SUPREME COURT.]
J. C. Shah,
V. Ramaswami and
V. Bhargava, *JJ.*
8th January, 1968.

Delhi Motor Company *v.*
U. A. Basrurkar
C.A. No. 495 of 1965.

Delhi and Ajmer Merwara Rent Control Act (XIX of 1947)—*Transfer of Property Act (IV of* 1882), *sections* 106, 107 *and* 53-*A*, *Specific Relief Act (I of* 1877), *section* 27-*A*.

These circumstances, however, are immaterial, because we have already indicated earlier our finding that this lease was at least for a minimum period of 15 months and consequently, section 107 of the Transfer of Property Act (IV of 1882) becomes applicable irrespective of the question whether it was a lease from month to month or from year to year. The High Court was, therefore, quite correct in holding that on the basis of this lease the reliefs claimed by the firm could not be granted to it.

In our opinion, this argument proceeds on an incorrect interpretation of section 53-A, because that section is only meant to bring about a bar against enforcement of rights by a lessor in respect of property of which the lessee had already taken possession, but does not give any right to the lessee to claim possession or to claim any other rights on the basis of an unregistered lease. Section 53-A of the Transfer of Property Act is only available as a defence to a lessee and not as conferring a right on the basis of which the lessee can claim rights against the lessor. This interpretation of section 53-A was clearly laid down by their Lordships of the Privy Council in *Probodh Kumar Das* v. *Dantmara Tea Company Ltd.* L R 66 I.A. 293 : (1940) 1 M L J. 75: A.I.R. 1940 P C. 1.

In this connection, it is significant to note that under sect on 53-A of the Transfer of Property Act, a transferor is barred from interfering with the rights of the transferee, even if the transferee gets possession of any part of the property sought to be transferred by the unregistered document of transfer. That section specifically uses the expression " taken possession of the property or any part thereof," whereas the words used in section 27-A of the Specific Relief Act are: " taken possession of the property." The omission of the words "any part thereof" in section 27-A of the Specific Relief Act when compared with the provision in section 53-A of the Transfer of Property Act clearly brings out the position that the former section is only applicable when possession of the entire property, which is the subject-matter of the contract, has been taken, possession of while the latter section is made applicable even if the lessee takes possession of any part of the property. Consequently, on the facts of the present case, the firm could not claim specific performance of the contract

under section 27-A of the Specific Relief Act, even if such a claim had been put forward in the plaint. This alternative contention also, therefore, fails.

Rameshwar Dayal and *A. D. Mathur*, Advocates, for Appellants.

Veda Vyasa, Senior Advocate, (*K. K. Jain* and *H. K. Puri*, Advocates, with him), for Respondent No. 6.

G. R. — *Appeal dismissed.*

[SUPREME COURT.]

J. C Shah, and *V. Ramaswami, JJ.* 17*th January*, 1968.

Ningawa *v.* Byrappa Shiddappa Hireknrabar. C.A. No. 586 of 1965.

Limitation Act (*IX of* 1908), *Articles* 91 *and* 95—*Contract Act* (*IX of* 1872), *section* 16 (3)—*Evidence Act* (*I of* 1872), *section* 111—*Burden of proof regarding exercise of undue influence.*

Section 16 (3) of the Indian Contract Act says that where a person who is in a position to dominate the will of another enters into a transaction with him which appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such transaction was not induced by undue influence, shall lie upon the person in a position to dominate the will of another.

On behalf of the appellant Mr. K. R. Chaudhuri presented the argument that the appellant continued to be under the undue influence of her husband till the date of his death and the three years' period under Article 91 should therefore be taken to run not when the appellant had knowledge of the true nature of the gift deed but from the date when she escaped the influence of her husband by whose will she was dominated. It is not possible to accept this argument in view of the express language of Article 91 of the Limitation Act which provides that the three years' period runs from the date when the plaintiff came to know the facts entitling her to have the instrument cancelled or set aside. This view is borne out by the decision of the Judicial Committee in *Someshwar Dutt* v. *Tirbhawan Dutt*, L.R (1934) 61 I.A. 224 : 67 M L J. 7 : A.I R. 1934 P C. 130, in which it was held that the limitation of a suit to set aside a deed of gift on the ground that it was obtained by undue influence was governed by Article 91 of the Indian Limitation Act, and the three years' period runs from the date when the plaintiff discovered the true nature of the deed, and not from the date when he escaped from the influence by which he alleged that he was dominated

K. R Chaudhuri, Advocate, for Appellant.

Naunit Lal, Advocate, for Respondents.

G R — *Appeal allowed.*

[SUPREME COURT]

M Hidayatullah, *S M Sikri* and *K. S Hegde, JJ* 19*th January*, 1968.

Laxman Siddappa Naik *v.* Kattimani Chandappa Jampanna. C.A. No. 1303 of 1967.

Representation of People Act (*XLIII of* 1950), *section* 116-*A*—*Scheduled Tribes specified in Part VIII, Para* 2 *of the Constitution* (*Schedule Tribes*) *Order*, 1950—*States Re-organisation Act* (*XXXVII of* 1956)—*Constitution of India* (1950), *Articles* 332 *and* 342.

It has been pointed out in this Court, in the cases to which we have referred, (1966) S C R (Supp) 387, *B. Basavalingappa* v. *D Hunichinnappa*, (1965) 2 S C J. 153 . (1965) 1 S C R 316 A I R 1965 S C 1269; *Bhaiya Lal* v. *Harikishan Singh*, (1966) 2 S C J 77· (1965) 2 S C.R 877: A I.R 1965 S C 1557; that one must accept the Presidential Order. The Presidential Order shows that Naikdas or Nayakas are to be found not only in the districts of Mysore but also in Maharashtra and Rajasthan. This tribal community is, therefore, quite wide-spread and it

is not possible to say that there was no Nayaka in the district to which the appellant belonged. Even if he was the solitary Nayaka he would be covered by the Presidential Order and would be entitled to stand for the reserved seat for the tribal communities mentioned in the Presidential Order. He claimed to be a Nayaka and this claim was upheld by the Returning Officer. It is significant that he was not an independent candidate but one chosen by a party. This party would not have been easily imposed upon and would have taken care to select the right person for the seat. There were two others who also came forward as Nayakas. In these circumstances the learned Judge was in error in attempting to establish that the tribal community mentioned as Nayakas was not to be found in this area and that only Naikdas were found and as the appellant did not claim to be a Naikda he must be held to be disentitled to be chosen to fill this seat for the tribal communities. A heavy burden obviously lay upon the election petitioner to displace his claim by evidence. He did not even lead *prima facie* evidence and therefore the claim cannot be said to have been negatived.

An election is something which cannot be readily set aside. There must be proof and convincing proof that a person is not properly chosen to fill a particular seat. Mere suspicion or surmise is not sufficient after the Returning Officer accepts a candidature and the candidate is chosen in the election. Once a community has gone to the polls and the voters have exercised their franchise it is necessary for an election petitioner to show that the candidate is not entitled to the seat. In other words, the burden originally lies on the election petitioner and he cannot succeed unless he discharges that burden. The High Court recognized that there was no evidence in the case but went into the matter from a different angle and attempted to contradict the Presidential Order which it was not entitled to do.

S. S. Javali and *M. Veerappa*, Advocates, for Appellant.

R. Gopalakrishnan, Advocate, for Respondent No. 1.

G.R. —————— *Appeal allowed.*

[SUPREME COURT.]

M. Hidayatullah and *K. S. Hegde, JJ.* 30*th January*, 1968. — State of U. P. *v.* Maharaj Narain. Crl. A. No. 122 of 1965.

Limitation Act, 1908 (*IX of* 1908), *section* 12 (2)—*Item* 157, *First Schedule—Meaning of words "Time requisite"*

It must be remembered that sub-section (2) of section 12 enlarges the period of limitation prescribed under Entry 157 of Schedule I. That section permits the appellant to deduct from the time taken for filing the appeal, the time required for obtaining the copy of the order appealed from and not any lesser period which might have been occupied if the application for copy had been filed at some other date. That section lays no obligation on the appellant to be prompt in his application for a copy of the order. A plain reading of section 12 (2) shows that in computing the period of limitation prescribed for an appeal, the day on which the judgment or order complained of was pronounced and the time taken by the Court to make available the copy applied for, have to be excluded. There is no justification for restricting the scope of that provision.

In other words, what their Lordships said was that any delay due to the default of the Pleader of the appellant cannot be deducted. There can be no question of any default if the steps taken by the appellant are in accordance with law. Hence, the above quoted observations of the Judicial Committee can have no application to the point under consideration. *Mathala* v. *Sher Mohammad*, A.I.R. 1935 Lah. 682; *Pramatha Nath Roy* v. *William Arthur, Lee*, L.R. (1922) 49 I.A. 307: 43 M.L.J. 765; *J. N. Surty* v. *T. S. Chettyar*, L.R. (1928) 55 I.A. 161 : 54 M.L.J. 696.

Preponderance of the judicial opinion is in favour of the conclusion reached by us earlier. The leading case on the subject is the decision of the Full Bench of the

Madras High Court in *Thirumala Reddi* v. *Anavema Reddi*, (1933) I.L R. 57 Mad. 560 : (1933) 66 M.L J 687 : A I R. 1934 Mad 306 ; wherein the Court laid down that in section 12 the words "time requisite for obtaining a copy of the decree' mean the time beyond the party's control occupied in obtaining the copy which is filed with the memorandum of appeal and not an ideal lesser period which might have been occupied if the application foi the copy has been filed on some other date. This decision was followed by the Travancore-Cochin High Court in *Kunju Kesavan* v. *M M Philip*, A I R 1953 T.C 552 ; by the Allahabad High Court in *State* v *Kashi Prasad*, A.I R 1950 All 486; and by the Madhya Pradesh High Court in *K. U Singh* v. *M. R Kachhi*, A.I.R. 1960 M.P. 140.

From the above discussion it follows that the decision under appeal does not lay down the law correctly But yet we are of the opinion that this is not a fit case to interfere with the order of the High Court dismissing the appeal The respondents were acquitted by the assistant sessions Judge, Farrukhabad on 10th November, 1962 We were informed by learned Counsel for the State that this appeal was brought to this Court mainly with a view to settle an important question of law, and under instructions from the State Government he told us that he does not press the appeal on merits Accordingly this appeal is dismissed.

O. P. Rana, Advocate, for Appellant.

J. P. Goyal and *Sobhag Mal Jain*, Advocates, for Respondents.

G.R. *Appeal dism'ssed.*

J. C Shah and *V Ramaswami JJ.* 31*st January*, 1968.

Kt N. Rm. Thenappa Chettiar *v.* N. S. Kr. Karuppan Chettiar. C A. No. 355 of 1965.

A Scheme in respect of a trust and for an account of the Management of a trust—Can a contributary to a trust be a Court trustee

In our opinion, the High Court was right in reaching the finding that the plaintiffs have failed to establish that they were the joint founders of the trust or that they were entitled in turns to management in proportion to their contributions.

It is not a correct proposition of law to state that every donor contributing at the time of foundation of a trust becomes a founder of the trust. It may be that in a particular case all the contributors of a trust fund become the founders of the trust itself, but the question when a contributor would become in law a joint founder of the trust would depend not merely upon the fact of his contribution but also upon the surrounding circumstances proved in the particular case and the subsequent conduct of the parties *In the matter of the Endowed Schools Act*, 1869 ; *and in the matter of the St. Leonard, Shoreditch, Parochial Schools* L R (1884) 10 A C. 304; it was held by the House of Lords that where a charity is established by subscriptions the original subscribers alone are the founders, and the later benefactions are on the footing of the original foundation.

As we have already stated, the appellants have failed to prove that all the contributories were the joint founders of the trust and that they were all in turns entitled to management in proportion to the amounts that they had contributed. On the other hand, the evidence makes it quite clear that the contributories agreed to leave the management of the trust solely in the hands of the senior Chockalingam and subsequently of defendant No. 2. We are accordingly of the opinion that N. C. Chatterjee has been unable to make good his argument on this aspect of the ease.

In the Present case the appellants being contributors to the trust are interested in the proper administration of the trust and, in our opinion, they have a sufficient right to bring a suit in a Civil Court in case there is mismanagement or breach of trust on the part of the managing trustee and for framing of a scheme.

M—N R C

N. C. Chatterjee, Senior Advocate (*R. Thiagarajan*, Advocate for *R. Ganapathy Iyer*, Advocate with him), for Appellants.

K. Gopalachari and *R Gopalakrishnan*, Advocates, for Respondents.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

K. N. Wanchoo, C.J.
R S Bachawat,
J. M Shelat and
C. A Vaidialingam, JJ.
5*th February*, 1968.

The South Bihar Sugar Mills Ltd. *v.* Union of India etc.
C.As. Nos. 289-311 of 1965 and 999 to 1001 of 1967. and W.P. No. 212 of 1966.

Central Excise and Salt Act (*I of* 1944), *Item* 14-*H in Schedule I—Excise Rules* (1944) *Rule* 8 (1).

The Act charges duty on manufacture of goods The word "manufacture" implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use. The duty is levied on goods. As the Act does not define goods, the legislature must be taken to have used that word in its ordinary, dictionary meaning. The dictionary meaning is that to become goods it must be something which can ordinarily come to the market to be bought and sold and is known to the market. That it would be such an article which would attract the Act was brought out in *Union of India* v. *Delhi Cloth and General Mills Ltd.*,(1963) 1 S.C.R. (Supp.) 586 : A.I.R. 1963 S.C. 791.

In our view, the gas generated by these concerns is kiln gas and not carbon dioxide as known to the trade, *i e.*, to those who deal in it or who use it. The kiln gas in question therefore is neither carbon dioxide nor compressed carbon dioxide known as such to the commercial community and therefore cannot attract Item 14-H in the First Schedule. In this view it is not necessary for us to consider certain other contentions raised by the appellants and the petitioners in the writ petition.

In the result, the appeals and the Writ petition must be allowed and the orders passed by the High Court in the appeals must be set aside. We hold that the demand notices served on these concerns are illegal and must be quashed. The respondents in these appeals as also in the Writ petition will pay costs to the appellants and the petitioner in the Writ petition. The costs will be one hearing fee for the appeals and a separate set of costs in respect of the Writ petition.

S. V. Gupte, Senior Advocate (*Rameshwar Nath* and *Mahinder Narain*, Advocates of *M/s. Rajinder Narain & Co.*, with him), for Appellants (In C.As. Nos. 289-311 of 1965).

Rameshwar Nath and *Mahinder Narain*, Advocates of *M/s. Rajender Narain & Co.* for Appellants (In C As. No. 999 of 1967).

S. Sorabji and *D S Dang*, Advocates, and *Ravinder Narain*, Advocate of *M/s. J. B. Dadachanji & Co* for Appellants. (In C.As. No. 1000 of 1967).

S. V. Gupte, Senior Advocate (*K. K. Jain*, Advocate , with him), for Appellants (In C.A. No. 1001 of 1967).

N. A. Palkhivala Senior Advocate (*F. N Kaka* and *O. P. Malhotra*, Advocates, and *O. C. Mathur* and *Ravinder Narain*, Advocates of *M/s. J. B. Dadachanji & Co.*, with him), for Petitioner (In W.P. No 212 of 1966)

C. K. Daphtary, Attorney-General for India and *B. Sen* Senior Advocate (*R. H. Dhebar* and *S. P. Nayar*, Advocates, with them), for Respondents (In W.P No. 212 of 1966) : and the Respondents (In C. As. Nos. 289 to 311 of 1965)

C. K. Daphtary, Attorney-General for India (*R. H Dhebar*, Advocate with him), for Respondents (In C.As. Nos. 999, 1000 and 1001 of 1967).

N. A. Palkhivala, Senior Advocate (*O.C. Mathur* and *Ravinder Narain*, Advocates of *M/s. J B. Dadachanji & Co.*, with him), for Intervener (In C.As. Nos. 289 to 311 of 1965).

G.R. —— *Appeals allowed.*

A. Alagiriswami, J.
7th December, 1967.

Ponnumuthu *v.*
Krishnan Nadar.
Cr.A. No 835 of 1965.

Penal Code (*XLV of* 1860), *section* 378—*Theft—Purchaser of property from plaintiff in a suit—Delivery warrant and attakshi proving the possession of plaintiff—Presumption of official acts being regularly and correctly performed—Complaint at the instance of purchaser—Sustainable.*

Evidence Act (*I of* 1872), *section* 114, Illustration E—*Public records—Maintained in the ordinary course—Official acts regularly and correctly performed—Presumption—Delivery warrant and attakshi—Possession—Presumption*

In regard to public records which are maintained with regularity in the ordinary course of routine they must be presumed to show official acts regularly and correctly performed until the contrary is proved.

Where the delivery warrant and attakshi clearly recited that the plaintiff took possession of the property from the judgment-debtor and put the decree-holder in possession of the same, the plaintiff would be in possession of the property until the contrary was established. If possession had not been delivered through Court then of course it would be different matter.

The purchaser from such a plaintiff would be entitled to maintain a complaint against the defendants in regard to an offence of theft committed against the property in his hands. The fact that the defendants were still litigating about their rights in the appellate Court would not show that either they had right to possession or that there was no criminal intent on their part.

On the facts, the offence of plucking fruits from the purchaser's lands was however not proved and hence the complaint was liable to be thrown out

S. Padmanabhan, for Appellant.

K. Swamidurai, for Respondents.

Calwin Jacob for Public Prosecutor on behalf of State.

V.S. *Appeal dismissed.*

T. Venkatadri, J.
8th January, 1968.

Subbammal *v.*
State of Madras.
W.P.No. 2376 of 1965.

Land Acquisition Act (*I of* 1894), *section* 6—*Compensation for acquisition—No amount paid by the State—Payment by persons for whose benefit lands were acquired—Proceedings liable to be quashed as without jurisdiction.*

Where the Government did not contribute any amount towards the compensation for the lands acquired but the persons for whose benefit the lands were sought to be acquired paid the entire compensation amount, the declaration issued by the Government under section 6 (1) of the Act has to be set aside as one made without jurisdiction, since the procedure as to the acquisition of lands had not been followed strictly and since it is a colourable exercise of the power.

Ponnaia v. *Secretary of State for India*, 51 M L J 378 and *Syed Dilawar Hussain* v. *Collector of Madras*, (1955) M W.N. 285, referred.

V. Vedantachari for *T L Nagaraja Rao*, for Petitioner.

Assistant Government Pleader on behalf of Respondents.

V.S. *Petition allowed.*

K Srinivasan, J
9th February, 1968.

Kulla Moopan *v.* Vadivelu Moopan.
S A No 308 of 1964

Civil Procedure Code (*V of* 1908), *section* 64—*Lease in favour of three persons by legal representatives of judgment-debtor during pendency of attachment—Effect of—Whether void—One of the lessees purchasing the property in Court auction—Suit by such purchaser against other lessees for possession—Right of purchaser to khas possession—Whether other lessees entitled to be in possession as cultivating tenants—Whether purchaser estopped*

The execution of the lease, which is a transfer of a right in immovable property, by the judgment-debtor during the pendency of an attachment which has undoubtedly the effect of adversely affecting the rights flowing from the attachment, that is to say, the rights of the auction-purchaser is void under section 64, Civil Procedure Code.

The fact that the plaintiff was at that time a joint lessee cannot affect the rights which he subsequently secured as the auction-purchaser The lease being invalid in law he had no rights in the property on the foot of the lease and he must be regarded as a stranger in so far as his purchase at the Court auction comes to be considered The argument that the plaintiff is estopped because he was a joint lessee is not sound for when the statute declares a particular transaction to be void a person who was a party to that transaction cannot for that reason alone be prevented from working out other rights than those flowing from the invalid lease

Held, the appellant was rightly held not to be entitled to resist auction purchasers' claim to possession

(1902) L R 29 I A 9 12 M L J 73. I L R 29 Cal 154 (P C), A I R 1936 All 265

I L R (1965) 1 All 99, I L R (1955) Nag 607, and I L R (1928) 51 Mad 770; 54 M L J 445, referred to.

S Palaniswamy, for Appellant

Sethuratnam, for Respondents.

S V J

Second Appeal dismissed
No leave.

Krishnaswamy Reddy, J
1*st March*, 1968

Ramanuja Naidu *In re*
Crl R C No 488 of 1966

Penal Code (*XLV of* 1860), *section* 378—*Theft—Defence of taking under a* bona fide *claim—Rival purchasers of same property—Lessee in possession—Crops raised by lessee—Removal of crops by one purchaser*—Bona fide *claim to property—Sustainability*

The lands in the possession of the lessee was first sold to the petitioners but the sale deed was not registered The same land was sold to another by a subsequent sale deed which was registered The first sale deed was then registered on the application of the petitioners. The lessee who was continuing in possession had raised crops The petitioners trespassed into the land, cut and carried away the crops. The question is whether the petitioners would be entitled to a *bona fide* claim of right to the properties.

Held, on the facts that the lessee had raised the crops, that the petitioners were fully aware of it and that they had not made out a case as to how they were entitled to the crops raised by the lessee of the original owner, the *bona fide* claim of right cannot be sustained.

The *bona fide* claim of right can be asserted between two rival claimants It is probable that such a claim can be made by two rival purchasers of property Where there is no such claim put forward but a trespass alleged against the lessee who is lawfully in possession and the lessee had raised crops thereon, the removal of the crops by the petitioners-purchasers cannot be sustained on the basis of the *bona fide* claim to property.

K Rameswamy, for Petitioners

Assistant Public Prosecutor on behalf of State.

V.S.

Revision Petition dismissed.

Veeraswamy and *Ramaprasada Rao, JJ* *26th September*, 1967.

Perumal Naicker *v.* T. Ramaswamy Kone. L.P A No. 97 of 1963.

Transfer of Property Act (IV of 1882), *section 3—Immovable property—Attached to the earth—Oil Engine fitted to earth—Movable or immovable.*

For a chattel to become part of immovable property and to be regarded as such property, it must become attached to the immovable property as permanently as a building or a tree is attached to the earth. If, in the nature of things, the property is a movable property and for its beneficial use or enjoyment, it is necessary to imbed it or fix it on earth, though permanently, that is when it is in use, it should not be regarded as immovable property for that reason.

Whether the attachment of an oil engine to earth, though it is undoubtedly a fixture, is for the beneficial enjoyment of the engine itself and in order to use the engine it has to be attached to the earth and the attachment lasts only so long as the engine is used and when it is not used, it can be detached and shifted to some-other place, the attachment in such a case, does not make the engine part of the land and as immovable property.

A Sundaram Iyer and *T R. Mani*, for Appellant.

N. Ramachandran, T. Sivamani, N. Krishna Mitra and *V. Narayanaswami*, for Respondent 1.

Government Pleader on behalf of Respondent 2.

V.S. *Appeal dismissed.*

Ramakrishnan, J. *26th June*, 1968.

Trustees of Mariamman Temple, Salem Town *v.* The Director of Settlements. W P. No. 4103 of 1965.

Madras Estates Abolition and Conversion into Ryotwari Act (XXVI of 1948)—*Assistant Settlement Officer granting patta to a party—Revision to Director of Settlement against the order—Assistant Settlement Officer, who had passed the original order, became Director of Settlement—Disposal of revision by that Director of Settlements—Whether proper.*

Constitution of India (1950), *Article* 226—*Order passed by an officer—Revision against that order—Disposal of the revision by the same person, who passed the original order, though in a different capacity—Improper—Opposed to principles of natural justice.*

Held, it is clear that the situation besides involving a Gilbertain paradox, which should be strongly deprecated in matters of this kind, is also opposed to the principles of natural justice. The power of revision being a statutory one, the officer exercising it should carefully see whether the order sought to be revised was passed by himself at an earlier stage, when he occupied a lower position in the official hierarchy and if that was the case, he should have taken steps to ensure that the matter was taken up for disposal by some other person Such a procedure has not been followed in this case. The order of the first respondent is clearly not maintainable.

T. S. Subramaniam, for Petitioner.

J. Kanakaraj and *K. Doraiswami* for *J. M. Ramachandran* and *R. Kulandaivelu* for Respondents.

S.V.J. *Writ Petition allowed.*

Ramaprasada Rao, J. Ratna Gramani *v* Saradambal.
3rd July, 1968. C R.P. No. 2150 of 1965.

Civil Procedure Code (V of 1908), sections 115, 151 and Order 1, rule 10—Partition suit—Preliminary decree passed—Application for final decree filed—Petition to implead alienee—Delay in filing petition—Whether disentitles petitioner to implead—Orders necessary to render justise—Jurisdiction of Court to pass such orders—Interference in revision.

It is now well established that in a partition action there is no interdict as such against any proceeding being initiated by a party to the action to adjust equities which were not by then worked out to the satisfaction of all parties. It is not as if the party to a partition action or the Court is precluded or prevented from filing or from entertaining respectively any application even for the purpose of giving the redress to a party in matters referred to in I L R. (1965) 1 Mad. 111. One such matter is the allocation of the share of the alienee which necessarily involves the consequential allocation of the share of the party with reference to the alienated property as well. Under these circumstances, it is very clear that this Court has jurisdiction to pass such incidental orders as are necessary to render justice and equitably distribute the suit properties between the parties who are entitled to the same.

Held, that the application for securing the necessary directions and in particular to implead the alinee is one to secure redress and ultimately for the adjustment of all the equities of the parties. Such being the scope of the application and it is not being denied that the alienee is a necessary and proper party to be brought to Court for such adjustment of the equities, the mere delay in taking out this application cannot in any manner disentitle the petitioners to the legitimate relief to which they are entitled. *Held,* the lower Court did not exercise its jurisdiction properly in not allowing the petition and impleading the proposed party.

I L.R. (1952) Mad. 173 (F.B.); I L.R (1965) 1 Mad 111 and (1967) 1 S.C J. 450, referred to.

R. Sundravaradan, for Petitioners.

R. Desikan for *V. R. Bikksheswaran,* for Respondents.

S.V J. *Revision allowed.*

Alagiriswami, J. N.PS M Somasundram Chettiar *v.*
6th August, 1968. K.R.RM.S.SP. Chokalingam Chettiar.
S A. No. 873 of 1964.

Limitation—Adverse possession—Starting point—Two brothers owning joint family properties—One of them insolvent and his share vests in Official Receiver—Sale by Official Receiver of insolvent's share—Status of vendee from Official Receiver in relation to insolvent's brother and his sons—Whether equated to coparcener—Insolvent's brother and his sons in possession—Whether adverse —Vendee entitled to joint possession—Sale of insolvent's brother's share in Court auction on 16th January, 1950—Possession of insolvent's brother's sons subsequent to 16th January, 1950—Suit for possession by vendee's vendee from Official Receiver within 12 years from 16th January, 1950—Whether barred.

Relying on the principles laid down in I.L.R. 45 Mad. 489: 43 M L J. 428: 43 M L.J. 569: I.L.R. 46 Mad. 54 (F B.): 55 M.L J. 163: I.L R. 51 Mad. 567: and I L.R. 58 Mad. 126: 67 M L J. 486, it was held that the plaintiff's vendor's position is equated to that of a coparcener entitled to joint possession along with defendants 1 to 4 till 16th January, 1950. It was on 16th January, 1950 when their father's share was sold in Court

auction and purchased by 5th defendant that defendants 1 to 4 ceased to be coparceners or entitled to any interest in the suit property or any portion thereof It is therefore, only from that date that their possession is that of persons who are not entitled to be in possession and, therefore, their possession can be said to be adverse. As the present suit has been filed within 12 years of that date the suit is in time and the plaintiff is entitled to succeed in obtaining possession of the property

A Sundaram Iyer and *S. V. Jayaram,* for Appellant.

S. Sitarama Iyer and *S. Rajarama Iyer,* for Respondents.

S.V.J.

Second Appeal allowed : No leave.

Alagiriswami, J. Reginald Daniel *v* Sarojam.
9th August, 1968. C M A.No 2 of 1968.

Guardian and Wards Act (VIII of 1890), *sections* 17, 19 *and* 25—*Application for custody of child of tender years by father under section* 25—*Child in the custody of mother—Father living with a mistress in his house—Whether entitled to custody of child—Relevant consideration for granting custody—Whether different considerations arise under section* 25 *from those of under sections* 17 *and* 19.

The fact that the appellant ill-treated the wife would not be a relevant consideration in coming to the conclusion that he is not a proper person to have the custody of his child, nor can it be said in this case that the appellant had permitted or allowed the other person to have the custody of the child and therefore, he should not be allowed to have the custody of his child.

In considering the application under section 25, considerations cannot be different from those that apply in cases wherein sections 17 and 19 are involved.

When an application under section 25 is filed by a father, the only consideration would be whether the father is unfit to be a guardian of his minor child. If he is not unfit, no other consideration can arise.

Held, on facts, that a person who is living with a mistress in his house can hardly be considered to be a person fit to have the custody of his child of tender years, and that it is better that the custody of the child continues to be with mother. Orders as to custody of a child being always of a temporary nature those interested in the minor are at liberty to apply to Court at any time for the change of the minor's custody.

27 M L J 30 : I L R. 38 Mad (P C) 807 ; I L R 39 Mad 473 : 28 M.L J. 442 ; A.I.R 1922 Bom 405 , A.I R 1941 Bom 103 , 65 Cal.W N. 1138 and A.I.R 1955 Mad 451, referred to.

S. Padmanabhan, for Appellant.

T. R. Ramachandran and *T. R. Rajagopal,* for Respondents.

S.V J.

Appeal dismissed.

Natesan, J.
9th August, 1968

Chinna Kannu Goundar *v.*
Hanumantha Goundar.
S.A.No. 1401 of 1964.

Transfer of Property Act (IV of 1882)—Redemption—Suit for—Usufructuary mortgage and lease back—Whether form different transaction or part of same transaction depends upon facts and circumstances of the case—No document for lease back—Charge not created for rent due over the hypotheca—Mortgagee obtaining decree against original mortgagor for arrears of rent—Assignment of equity of redemption by mortgagor—Suit for redemption by the assignee—Whether assignee bound to pay arrears of rent.

It is now well established that the question whether an usufructuary mortgage and a lease back by the mortgagee to the mortgagor form distinct transactions or together they form part of the same transaction, is one which depends upon the facts and circumstances of the case. If the circumstances reveal that, in leasing the property back to the mortgagor the mortgagee intended no more than to resort to a device or arrangement to secure payment of interest by the mortgagor on the mortgage amount, the conclusion is that the lease is not a separate transaction but is really part of the mortgage transaction. If the circumstances of a particular case, where the mortgagee had leased back the mortgaged property to the mortgagor, warranted it would be a reasonable inference that in leasing the property to the mortgagor the mortgagee intended to secure to himself the income from the mortgaged property, to which he was entitled under the mortgage. The income would be paid to him by the mortgagor in the shape of rent. In substance it would represent interest on the mortgage money, but it cannot be held that in every case as part of the transaction, when the property which is usufructuarily mortgaged is leased back to the mortgagor, the rent agreed is really interest and therefore mortgage money and a charge on the property payable at redemption.

Rents ordinarily due under a lease of the mortgaged property as such are not charge on the mortgage property. Unless a charge has been created for rent falling due over the hypotheca, it would be difficult to contend that, for redemption, arrears of rent must also be paid by the mortgagor, whatever the position may be if the action is between the mortgagee and the original mortgagor, when the assignee of the equity of redemption sues for redemption one cannot find any equity in mulcting the assignee with the rents which the usufructuary mortgagee had failed to realise from the original mortgagor and which are not a charge on the hypotheca.

Held further, that the mortgagee has taken a decree against the original mortgagor who has ceased to have interest in the mortgaged property prior to the decree and prior to the suit for redemption The rents due have become merged in the decree which, by itself, does not create an enforceable charge. The decree, therefore is not enforceable as such against the assignee of the equity of redemption.

11 M.L.J. 186 : I.L.R. 20 All. 401 ; I.L.R. 32 All 612 ; I.L.R. 41 Mad. 1043, A.I.R. 1921 Mad. 183 ; A.I.R. 1924 P.C. 183, A.I.R. 1927 P.C. 82, A.I.R. 1940 Mad. 946 ; A.I.R. 1951 Bom 19, A.I.R. 1950 Mad 434 ; (1952) 2 M.L.J. 675 ; A.I.R. 1961 Mad 378, and (1963) 1 M.L.J. 171, referred to.

T. R. Ramachandran and *V. T. Krishna Rao*, for Appellant.

C. Natarajan and *A. Amirthalingam*, for Respondents.

S.V.J.

Second Appeal dismissed;
No leave.

[SUPREME COURT.]
K. N. Wanchoo, C.J.,
R S. Bachawat,
J M. Shelat,
G. K. Mitter and
C. A Vaidialingam, JJ.
10*th January*, 1968.

Virudhunagar Steel Rolling Mills Ltd. *v.*
Government of Madras.
W.P. No. 38 of 1967.

Industries (Development and Regulation) Act (LXV of 1951) *(hereinafter referred to as Central Act), section* 11—*Madras Electricity (Taxation and Consumption) Act (IV of* 1962) *(hereinafter referred to as the Madras Act), section* 12—*Principle of Res judicata—Preliminary objections for not having filed appeal—Article* 14 *of the Constitution.*

We are of opinion that the preliminary objection must prevail. It is urged on behalf of the petitioner that the decision in the *case of Daryao*, (1967) 1 S.C R. 574, shows that it was only when notice had been issued on a writ petition and it is decided on contest that the principle of *res judicata* would apply and a petitioner losing on such contest in the High Court would not be entitled to come to this Court under Article 32 of the Constitution. In this connection reference has been made to the observation at page 592, where this Court observed that "if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution " But it was later observed on that very page that ' if the petition filed in the High Court under Article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Article 32. If a writ petition is dismissed *in limine* and an order is pronounced in that behalf whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the petition is dismissed *in limine* without passing a speaking order then such dismissal cannot be treated as creating a bar of *res judicata* "

R. Gopalakrishnan, for Petitioner.

A. V. Rangam, for Respondent.

G. R. *Petition dismissed.*

[SUPREME COURT.]
J. C. Shah,
V. Ramaswami and
V. Bhargava, JJ.
10*th January*, 1968.

TS. PL. P. Chidambaram Chettiar *v.*
T. K B. Santanaramaswami Odayar.
C As. Nos. 54-65, 67 and 69-71 of 1963.

Madras Estates Land Act (I of 1908)—*Whether Tanjore Palace Estate is ' an Estate.'*

In our opinion the correct test to ascertain whether a land is domain or home-farm is that accepted by the Judicial Committee in *Yerlagadda Malikarjuna Prasad Nayadu* v. *Somayya*, I.L.R 42 Mad 400 (P C), that is, whether it is land which a zamindar has cultivated himself and intends to retain as resumable for cultivation by himself even if from time to time he demises for a season. The Legislature did not use the words ' domain or home-farm land ' without attaching to them a meaning; and it is reasonable to suppose that the legislature would attach to these words the meaning which would be given to them in ordinary English It seems to us that sub-cl. (*b*) (1) of the definition is intended to cover those lands which come obviously within what would be appurtenant to the landholder's residence and kept for his enjoyment and use. The home-farm is land which the landlord cultivates himself, as distinct from land which he lets out to tenants to be farmed.

The first clause is, therefore meant to include and signify those lands which are in the ordinary sense of the word home-farm lands. The other clauses of the definition appear to deal with those lands which would not necessarily be regarded as home-farm lands in the ordinary usage of the term; and with reference to those lands there is a proviso that lands purchased at a sale for arrears of revenue shall not be regarded as private lands unless cultivated directly by the landlord for the required period. It seems to us that the definition read as a whole indicates clearly that the ordinary test for 'Private land' is the test of retention by the landholder for his personal use and cultivation, by him or under his personal supervision. No doubt, such lands may be let on short leases for the convenience of the landholder without losing their distinctive character, but it is not the intention of the scheme of the Act to treat as private those lands with reference to which the only peculiarity is the fact that the landlord owns leases. There must, in our opinion, be something in the evidence either by way of proof of direct cultivation or by some clear indication of an intent to regard these lands as retained for the personal use of the landholder and his establishment in order to place those lands in the special category of private lands in which a tenant under the Act cannot acquire occupancy rights. In the present case there is no proof that the lands were ever directly cultivated by the landholder. Admittedly, soon after the grant of 1862 the estate came under the administration of Receivers, who always let out the lands to the tenants to be cultivated.

The argument was stressed on behalf of the appellant that leasing rights of the land were auctioned periodically But the High Court has observed that one and the same tenant continued to bid at the auction and there was evidence that tenants continued to cultivate the lands without break or change, and the fact that there were periodical auctions of the lease rights did not necessarily deprive the tenants of the occupancy rights which they were enjoying We accordingly hold that the appellant has not adduced sufficient evidence to rebut the presumption under section 185 of the Act that the lands in the inam village are not private lands and the argument of the appellant on this aspect of the case must be rejected.

R. Kesava Iyengar, Senior Advocate (*R Thiagarajan* and *R. Ganapathy Iyer*, Advocates with him) for Appellants (In all the Appeals).

Bishan Narain, Senior Advocate (*O P. Malhotra*, Advocate for *M/s. J. B. Dadachanji & Co.*, with him), for Respondent No. 1 (In C.As. Nos. 54 and 55 of 1963).

M. R. K. Pillai, Advocate, for Respondent No. 2 (In C A. No. 55 of 1963) and for Respondents (In C.As. Nos. 56 to 65, 67 and 69 to 71 of 1963).

G. R. —— *Appeals dismissed.*

[SUPREME COURT.]

M. Hidayatullah, and K.S. Hegde, JJ., 15th January, 1968.

Hira Singh Pal *v.* Madanlal. C A.No. 1112 of 1967.

Representation of People Act (XLIII of 1951), *sections* 36 *and* 100—*Nomination papers improperly rejected.*

It may be noted that on the date of the scrutiny, the respondent was absent and there was nobody to represent him. The Advocate who represented the Congress organisation did not object to the rejection of the nomination of the respondent presumably because no one was interested in his nomination as the nomination of Mr. Hari Dass had been accepted. Possibly he is now challenging the election because his party's candidate has been defeated At this juncture, we may notice that the respondent did not even apply for a copy of the order of the Returning Officer rejecting his nomination till the election results were announced He admitted during his cross examination that he had acted as the counting agent of Mr. Hari Dass. It is proved from the evidence of the appellant that he actively

canvassed for Mr. Hari Dass. From the facts and circumstancs established in this case we have no doubt in our mind that the respondent was at no time a genuine candidate. He is merely availing himself of the opportunity of the rejection of nomination paper for undoing the result of the election

All the required information was before him Obviously he rejected the nomination papers for the reason that the respondent was only a dummy candidate but that was not a matter for him to decide If he was a dummy candidate there was occasion for him to withdraw his candidature after the scrutiny of the nomination papers. Therefore it is quite clear that the respondent's nomination papers were improperly rejected. Such a rejection was impermissible under section 36 and the same is a ground for setting aside the election under section 100 of the Represention of the People Act

H R Gokhale, Senior Advocate (*S K Khanna*, Advocate and *S. K. Mehta* and *K. L. Mehta*, Advocates of *Ms K L Mehta & Co*, with him), for Appellant

R. T Garg, *Naunit Lal* and *B P. Singh*, Advocates, for Respondent

G. R — *Appeal dismissed.*

[SUPREME COURT]

K N. Wanchoo, C J, R S Bachawat, J M Shelat, G K Mitter and *C A Vaidialingam, JJ*
17th January, 1968

Minor P Rajendran *v.* State of Madras.
W P. Nos 194, 196 and 202 of 1967.
C. A. No 1456 of 1967.

Group III of the Revised appendix 17-A to the Madras Educational Rules issued G.O (Ms) 839, Education, dated 6th April, 1961, as subsequently amended, rules 2 to 8 and 10—" Nativity Claimed—Articles 14, 15 (4) of the Constitution of India—" Permanent Residence—Districtwise allocation

We are of opinion that allocation of seats on districtwise basis is violative of Article 14. We may add that we do not mean to say that territorial classification is always bad under all circumstances But there is no doubt that districtwise classification which is being justified on a territorial basis in these cases is violative of Article 14, for no justification worth the name in support of the classification has been made out. We therefore hold that rule 8 providing for districtwise allocation is bad, as it violates Article 14 and we hereby strike it down.

In view of our decision as to rule 8 and in view of the fact that there is no question of disturbing the selection made this year, we do not think it necessary to decide finally whether the procedure for selection followed in the present cases to which we have already referred is in accordance with the rules or not. All that we need say is that it certainly looks odd that the members of the selection committee should sit separately But we do not propose to decide the point finally in the prsent cases.

We therefore partly allow the petitions and strike down rule 8 of the Rules for admission to medical colleges, which deals with districtwise allocation. The appeal is also allowed to the same extent We have already indicated that so far as the selection for the current year is concerned, it will stand , however, rule 8 will not be enforced when selection is made hereafter The petitioners/appellant will get their costs one set of hearing fee.

H R Gokhale, Senior Advocate (*Shyamala Pappu, M K Ramamurthi* and *Vineet Kumar*, Advocates, with him), for Petitioner in W P No 194 of 1967)

M K Ramamurthi, Mrs Shyamala Pappu and *Vineet Kumar*, Advocates, for Petitioners (In W Ps. Nos 196 and 202 of 1967).

M R M Abdul Karim and *K Rajendra Chaudhuri*, Advocates, for Appellant (In C A. No 1456 of 1967)

C K Daphtary, Attorney-General for India (*G Ramanujam* and *A V Rangam*, Advocates with him), for Respondents (In W Ps Nos. 194 and 196 of 1967). Res-

pondents Nos 2 to 6 (In C A. No 202 of 1967) and Respondent No 1 (In C A No. 1456 of 1967).

C. K. Daphtary, Attorney-General for India and *K. N. Mudaliar*, Advocate-General for the State of Madras (*A. V. Rangam* and *G. Ramanujam*, Advocates with, them), for Respondent No. 1 (In W P. No. 202 of 1967).

[SUPREME COURT.]
M. Hidayatullah,
S.M. Sikri and
K.S. Hegde, JJ.
22nd January, 1968.

Pashupati Nath Singh *v.*
Harihar Prasad Singh.
C.A.No. 1692 of 1967.

Represenation of People Act (*XLIII of* 1951), *Article* 173, *clause A of the Constitution—*
"*Having been nominated*".

It seems to us that the expression "on the date fixed for scrutiny" in section 36 (2) (*a*) means "on the whole of the day on which the scrutiny of nomination has to take place". In other words, the qualification must exist from the earliest moment of the day of scrutiny. It will be noticed that on this date the Returning Officer has to decide the objections and the objections have to be made by the other candidates after examining the nomination papers and in the light of section 36 (2) of the Act and other provisions. On the date of the scrutiny the other candidates should be in a position to raise all possible objections before the scrutiny of a particular nomination paper starts. In a particular case, an objection may be taken to the form of the oath ; the form of the oath may have been modified or the oath may not have been sworn before the person authorised in this behalf by the Election Commission. It is not necessary under Article 173 that the person authorised by the Election Commission should be the returning officer.

H. R Gokhale, Senior Advocate (*J. P. Goyal* and *Sobhag Mal Jain*, Advocates with him), for Appellant.

S. V. Gupte, Senior Advocate (*S.N. Prasad* and *B.P. Singh*, Advocates, with him) for Respondent.

R. K. Garg and *S. C. Agarwal*, Advocates of *M/s. Ramamurthi & Co.*, for Intervener.

G.R. *Appeal dismissed.*

[SUPREME COURT.]
J C. Shah, V. Ramaswami and
V. Bhargava, JJ.
25th January, 1968.

Hazari *v.*
Neki (dead) by his L Rs.
C.As. Nos. 1148, 1656 and 2341 of 1966

Punjab Pre-emption Act (*Punjab Act I of* 1913), *section* 15 (1) (a)—*Order* 20, *rule* 1 *Civil Procedure Code—Succession Act* (*XXIX of* 1925)—*Amending Act* (*X of* 1960)

By section 4 of the amending Act (X of 1960) section 15 of the parent Act was repealed and in its place was substituted a new provision which omitted to confer a right of pre-emption in the case of persons 'owning land in the estate' as the original section 15 (*c*) 'thirdly', had done. Retrospective effect was given to the provisions by the insertion of a new section 31 in the parent Act. The question for consideration was that whether by reason of this amendment in the law the respondent was entitled to the benefit of the decree which he obtained under the previously existing enactment. It was the case of the plaintiffs that he owned land in the estate whereas the vendee did not own land there. The defendant while not disputing that the plaintiff owned land in the village or the correctness of the allega-

tion that the land was in an 'estate', sought to prove that he too owned land in the same village and "estate' but in this he failed As the case of the plaintiff was directly covered by the terms of the statute his suit was decreed by the trial Court on 8th November, 1951, and an appeal and second appeal therefrom were also dismissed. The question was whether the respondent was entitled to a decree in view of section 31 of the Punjab Pre-emption Act, 1913 as amended by Punjab Act X of 1960 which came into force in 4th February, 1960 It was held by this Court that in view of the plain language of section 31, the substantive law enacted by the legislature in the amended section 15 of the Pre-emption Act should be applied and the decree for pre-emption in favour of the first respondent should be set aside. It is manifest that the material facts of the present case are different and the ratio of the decision of this Court in *Ram Sarup* v. *Munshi and others*, (1963) 3 S.C R 858, A.I R. 1963 S C 553 ; has no application to the present case. In *Ram Sarup's case*, the right of the plaintiff to pre-empt was extinguished retrospectively in the present case Neki's right to sue has not been extinguished. Neki had the right of pre-emption under the Amended Act at the time he instituted the suit and Neki's right was not extinguished on his death but passed to his legal representatives.

Prem Chand Jain and *Janardan Sharma*, Advocates, for Appellants (In all the Appeals).

D. D. Sharma, Advocate, for Respondent Nos. 1 and 4 to 13 (In all the Appeals).

G. R. —— *Appeals dismissed.*

[SUPREME COURT]

J.C. Shah and
V. Ramaswami, JJ.
25th January, 1968.

State of Madhya Pradesh *v.*
Sardar D K. Jadav.
C.As.Nos. 1244 and 1245
of 1967.

Madhya Bharat Abolition of Jagirs Act (*XXVIII of* 1961)

In our opinion the argument put forward on behalf of the appellant is well-founded and must be accepted as correct It is manifest that under section 17 of the Abolition Act only those disputes which pertain to the jagirdari title or right in jagir lands already resumed under section 3 of the Abolition Act, can be raised. The section also contemplates that the disputes must be raised during the course of an inquiry for assessment of compensation by the Jagir Commissioner. It should be noticed that section 17 is included in Chapter III which deals with compensation which the Government is liable to pay to every jagirdar whose jagir land has been resumed under section 3 It follows therefore that the inquiry made by the Jagir Commissioner under section 17 on the question of title is only for the purpose of enabling him to pay compensation to the person who in his opinion is entitled to receive it. In other words, the inquiry by the Jagir Commissioner or the decision of the State Government under section 17 does not embrace within its scope any dispute as to whether any particular property falls within section 4 (1) (*a*) read with section 5 of the Abolition Act and whether it has or has not in consequence vested in the State Government by the notification, issued under section 3 of the Abolition Act It is also necessary to add that the inquiry contemplated under section 17 by the Jagir Commissioner relates to compensation to be paid to the jagirdar whose jagir is vested in the State Government and once the compensation is determined and paid, no further inquiry under section 17 is contemplated We are accordingly of the opinion that the High Court was in error in holding that section 17 of the Abolition Act is applicable to the case and that the dispute raised by the respondent should have been determined in accordance with the procedure envisaged in section 17 of the Abolition Act.

It is well-established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact, the High Court is entitled, in a proceeding for a writ, to determine upon its own independent judgment whether or not that finding is correct. The matter has been very well put by Farwall, L J , in *Rex v. Shoreditch Assessment Committee*, L. R (1910) 2 K B. 859

For these reasons we allow this appeal, set aside the judgment of the Madhya Pradesh High Court dated 30th November, 1966 in Miscellaneous Petition No. 183 of 1965 and the case is remanded to the High Court for deciding it afresh in accordance with the directions given. It will be open to the High Court to take such further evidence oral and documentary as the parties may decide to give on the points at issue. The parties will bear their own costs upto this stage.

The material facts of C A.No 1244 of 1967 are almost similar to those in C.A. No. 1245 of 1967 and for the reasons given in that judgment, we hold that this appea should be allowed and the case should be remanded to the High Court for being decided afresh in accordance with the directions given in that judgment The parties will bear their own costs upto this stage

B. Sen, Senior Advocate (*I N Shroff*, Advocate, with him), for Appellants (In both the Appeals).

S. K. Mehta and *K. L. Mehta*, Advocates of *M/s K. L Mehta & Co.*, and *A. G. Ratnaparkhi*, Advocate, for Respondents (In both the Appeals).

G R. ——— *Order accordingly.*

[SUPREME COURT]

J C Shah, V. Ramaswami and *V Bhargava, JJ.* *31st January*, 1968

Gram Sabha Besahni *v.* Ram Raj Singh. C A.No. 719 of 1966.

Uttar Pradesh Zamindari Abolition and Lands Act, 1950 (*I of* 1951), *sections* 209, and 212-*A*.

It is true that, in accordance with Entry at Sl. No 32-B of Appendix III read with rule 338 of the U P. Zamindari Abolition and Land Reforms Rules, 1952 (hereinafter referred to as " the Rules "), a suit to establish a right claimed in accordance with section 212-A (7) of the Act has to be instituted within six months. In pursuance of that right claimed, possession can also be claimed , and, if the suit for establishing the right fails, the right to obtain possession would also become time-barred. Consequently, under section 189 (*c*) of the Act, the person concerned, who fails to institute the suit within this period of limitation in accordance with section 212-A (7) of the Act, would have his interest in the land extinguished. This provision, however, will only apply to cases where a valid order has been made under section 212-A of the Act and the person concerned has been dispossessed in pursuance of such an order. In the present case, we have held that the order, in pursuance of which the respondents were dispossessed, was not a valid order under section 212-A (6) of the Act and cannot be held to be an order under that provision of law so that the respondents in this case must be deemed to have been deprived of possession otherwise than in accordance with law In such a case, a suit clearly lay against the appellant under section 209 of the Act and such a suit could be instituted within six years from the date when unlawful possession was taken by the appellant in accordance with Entry at Sl No 30 of Appendix III read with rule 338 of the Rules. The present suit was admittedly brought within this period of limitation and was, therefore, not time barred The High Court was therefore, right in holding that the claim of the plaintiffs respondents could not be defeated on this ground.

S P Sinha, Senior Advocate (*F C Agrawala* and *P. C. Agrawala*, Advocates, with him), for Appellant

B C. Misra, Senior Advocate (*H K Puri*, Advocate, with him), for Respondents Nos 1 and 2

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

J C. Shah and *V. Ramaswami, JJ.*
31st January, 1968.

Firm Mukund Lal Veerkumar *v.* Purushottam Singh.
C As Nos 1167 to 1169 of 1965

Provincial Insolvency Act (*V of* 1920), *section* 7—*Transfer of Property Act* (*IV of* 1882) *sections* 122 *and* 123—*Indian Registration Act* (*XVI of* 1908), *sections* 47, 49—*Indian Partnership Act.*

In *Lakhmi Chand* v. *Kesho Ram,* I.L R. (1935) 16 Lah 735, it was held by the Full Bench of Lahore High Court that when a petition was presented alleging that a debtor had committed an act of insolvency by a registered deed, the period of limitation prescribed by section 9 (1) (*c*) of the Act ran from the date of the registration of the deed and not from the date of the execution thereof The same view was expressed by the Madras High Court in *Sarvathada Iswarayya* v. *Kuruba Subbanna* I L R (1935) 58 Mad 166 67 M L J 380 In that case, the execution of the sale deed was relied upon as an act of insolvency by a petitioning creditor and it was held by Madhavan Nair and Bardswell, JJ , that the three months' period prescribed by section 9 (1) (*c*) of the Act must be calculated from the date of the registration of the deed and not from the date of its execution. The same view was also enunciated by the Allahabad High Court in *District Board, Bijnor* v. *Mohammad Abdul Salam,* I L R (1947) All 624 A contrary view has been taken by the Full Bench of the Rangoon High Court in *U On Maung* v. *Maung Shwe Hpaung,* A.I R 1937 Rangoon 446 It was held that the period of three months referred to in section 54, Provincial Insolvency Act, began to run from the date of execution of the transfer provided it had been properly registered within the speci-ed time. We hold that the decisions in *Lakhmi Chand* v *Kesho Ram,* I L R (1935) 16 Lah 735, in *Survathada Iswarayya* v *Kuruba Subbanna,* (1935) 67 M.L J 380. I L R 58 Mad 166, and in *District Board Bijnor* v *Mohammad Abdul Salam,* I L R (1947) All 624, correctly state the law on the joint

It is manifest that an order of adjudication could be made against the firm in the present case if the proper conditions were satisfied We therefore reject the argument of the appellants on this aspect of the case.

The High Court has, in fact, allowed the appeal of Ram Surat Misra and set aside the order of the lower Courts declaring him as insolvent. We are consequently of opinion that the order of the lower Courts, so far as it adjudicates the registered firm as insolvent, should be set aside, but the rest of the order of the lower Courts declaring Mukand Lal as insolvent will stand.

Subject to this modification these appeals are dismissed. There will be no order as to costs of this Court.

A.K. Sen, Senior Advocate (*J. P Goyal,* Advocate, with him), for Appellants (In all the Appeals)

B. C Misra, Senior Advocate (*M. V. Goswami* and *R H Dhebar,* Advocates, with him), for Respondents Nos 1 and 2 (In C As. Nos. 1167 and 1168 of 1965).

S S Shukla, Advocate, for Respondent No 3 (In C As Nos 1167 and 1168 of 1965) and Respondent No 2 (In C A. No. 1169 of 1965).

B. C Misra, Senior Advocate (*R. Mahalingier,* Advocate, for Respondent No 1 2 to 5 (In C.A. No. 1169 of 1965).

G R.

Appeals dismissed.

[SUPREME COURT.]

J C Shah and *V. Ramaswami*, *JJ* 31*st January*, 1968

The Special Land Acquisition and Rehabilitation Officer, Sagar *v.* M. S. Seshagiri Rao. C.A. No. 335 of 1966.

Land Acquisition Act (*I of* 1894), *sections* 4, 5-*A*, 17 (4).

We are unable to agree with the High Court of Madras that when land is notified for acquisition, and in the land the State has an interest, or the ownership of the land is subject to a restrictive covenant in favour of the State, the State is estopped from setting up its interest or right in the proceedings for acquisition. The State in a proceeding for acquisition does not acquire its own interest in the land, and the Collector offers and the Civil Court assesses compensation for acquisition of the interest of the private persons which gets extinguished by compulsory acquisition and pays compensation equivalent to the market value of that interest. There is nothing in the Act which prevents the State from claiming in the proceeding for acquisition of land notified for acquisition that the interest proposed to be acquired is a restricted interest

We agree with the observations made by Batchelor, J., in *Government of Bombay* v. *Esufali Salebhai* (1910) I.L R 34 Bom. 618.

The principle of *Esufali Salebhai's case*, (1910) I.L.R 34 Bom. 618 was it may be observed, approved by this Court in *The Collector of Bombay* v. *Nusserwanji Rattanji Mistri and others*, (1955) 1 S C R. 1311 . (1955) S C J. 339.

But the view expressed by the District Court that the grantees are not entitled to any compensation for the land cannot be sustained. The District Court was bound to determine the market value, at the date of the notification under section 4 of the Land Acquisition Act, of the interest of the grantees in the land.

The order passed by the High Court is maintained subject to the modification that the market value of the interest of the grantees in the land (of the nature hereinbefore mentioned) at the date of the notification under section 4 of the Land Acquisition Act shall be determined and paid to the grantees in addition to the compensation paid for the improvement in the land. There will be no order as to costs in this appeal.

Niren De, Solicitor-General of India, (*R. Gopalakrishnan* and *S. P. Nayar*, Advocates, with him), for Appellant.

Naunit Lal and *T. S. Ramachandra*, Advocates, for Respondents.

G.R. *Answered accordingly.*

[SUPREME COURT]

J. C Shah,
V. Ramaswami and
V Bhargava, JJ
31*st January*, 1968.

Birendra Pratap Singh *v.*
Gulwant Singh.
C.A. No. 619 of 1965.

U P. Zamindari Abolition and Land Reforms Act, 1950 (1 *of* 1951) (*hereinafter referred to as the Act*)—*U. P. Tenancy Act* (*XVII of* 1939), *section* 47 (4)—*U. P. Tenancy* (*Amendment*) *Act* (*X of* 1947), *section* 295-*A.*

In these circumstances, the conclusion is irresistible that the appellants were not sub-tenants on 14th June, 1947, which was the date of commencement of the United Provinces Tenancy (Amendment) Act, 1947 and, therefore, section 295-A of the Tenancy Act never became applicable to the case of the appellants.

We are unable to find any reasons in support of the plea put forward on behalf of the appellants that the term of the sub-lease should be held to be five years simply because no period at all was mentioned in the sub-lease itself. No principle of law could be cited on behalf of the appellants in support of this plea

But in the present case, nothing in the conduct of the parties has been brought on record to show that the sub-lease was intended to remain effective for a period of five years only The sub-lease, as we have mentioned earlier, did not specify any term, but reserved an annual rent Such a lease can only be held to be either a permanent lease or a lease from year to year This proposition was clearly laid down by the Privy Council in *Janaki Nath Roy and others* v. *Dina Nath Kundu and others,* 61 M.L.J. 377 : A.I.R. 1931 P.C. 207.

The principle laid down, thus, categorically excludes an interpretation being put on such a lease by which the lease may be held to be for a fixed period The only interpretation possible is that either it is a permanent lease, or a lease from year to year. The contention on behalf of the appellants that this Court should hold the present sub-lease in favour of the appellants that this Court should hold the present sub-lease in favour of the appellants to be for a fixed term of five years must, therefore, be rejected Since the appellants themselves do not contend that this sub-lease should be held to be a permanent one because, in that case, it would become invalid, the conclusion necessarily follows that the sub-lease must be held to be from year to year, and it is on this basis that the rights of the appellants should be determined.

Gopalji Mehrotra, Senior Advocate (*S. S. Misra* and *C P. Lal,* Advocates, with him), for Appellants.

Jagdish Swarup, Senior Advocate (*J. P. Goyal,* Advocate, with him), for Respondents Nos. 1 to 4

G.R. *Appeal dismissed*

M. Anantanarayanan, C.J.
and
Natesan, J.
3*rd October*, 1967.

K. V. Vaidyanatha Iyer *v.*
The Chairman, Madras
Legislative Council.
W A No 355 of 1963.

Constitution of India (1950), *Article* 226—*Writ of* mandamus—*Original painting presented to Chairman, Legislative Council for Exhibition in Council Hall*—*Exhibition for some time and later relegation to storage*—*No infringement of any legal right*—*No duty on the Chairman*—*Writ, not to issue.*

The appellant presented his original painting of a national leader, to the Chairman of the Legislative Council for exhibiting the same in the Council Hall. The

painting was exhibited for some time but subsequently relegated to storage. The petitioner filed a writ of *mandamus* under Article 226 of the Constitution.

Held, a writ of *mandamus* will not issue as the appellant did not have a legal right.

The two conditions for the issue of a writ of *mandamus* are that a legal right must have veen infringed and a *mandamus* is prayed for to be issued to some public authority who has some duty cast upon him by any law or usage having the force of law, and which he has neglected to perform.

The appellant may have an interest but did not have a legal right. After' presentation and its acceptance he ceased to have any proprietary interest nor does the law clothe him with any right to enforce a coresponding obligation on the Chairman to exhibit the painting in a particular manner, or at a particular place. Equally the Chairman has no duty cast upon him by virtue of his office to exhibit the painting in any particular manner or at a particular place.

A. K. Srinivasan, for Appellant.

V S. *Appeal dismissed.*

Sadasivam, J
15*th December*, 1967.

Public Prosecutor *v.*
Meenakshi Achi.
Crl.A. No. 601 of 1965.

Prevention of Food Adulteration Act (XXXVII of 1954), *section* 16 (1) (*a*) (*i*), 2 (1) (*a*) (*j*) (*h*), 2 (*ix*) (*d*) 7 (1) *and rule* 28, *Clause A, II*, 11 *in Appendix B to rule* 5—*Ice Cream made of skimmed milk—Coal tar dye—Report of Public Analyst, vague—Need to examine Public Analyst—Director of Central Food Laboratory—Certificate of " his " analysis—Personal analysis, necessary—Supersession of report of public Analysis—When occurs.*

Ice Cream made of skimmed milk need not contain milk fat, but it should contain not less than 8.5 per cent of milk solids. The accused could not be convicted for having sold Ice Cream which did not contain milk fat, as it is the case of the accused that the Ice Cream was made of skimmed milk.

It has been repeatedly held in several decisions that the report of the Public Analyst should contain actual data of the analysis to enable the Court to decide that the article of food is adulterated The vague opinion to the effect that the sample of Ice Cream contained coal-tar dye which is not in the list of dyes permitted to be used upon food, can hardly be of any assistance to a Court in deciding whether the coal-tar dye used is really not one of the permitted varieties.

It is the duty of the Prosecution where the report does not give details, to examine the Public Analyst to satisfactorily prove to the Court that the coal-tar dye used by the accused is not of the permitted variety Section 13 (2) referring to the certificate of the Director of the Central Food Laboratory states at the end of the clause that the Director shall send a certificate to the Court in the prescribed form specifying the result of ' his ' analysis. In some edition of the Act the word ' the ' is found instead of the word ' his ' But in the authorised version of the Act, the word ' his ' is found The form prescribed under the rules is not in conformity with this section as it is only to the effect that the sample has been analysed and the result of the analyst alone is required to be stated Thus it has to be shown by the Prosecution that the analysis was done personally by the Director of Central Food Laboratory.

Section 13 (2) of the Act may confer a valuable right on the accused to have the sample analysed by the Director of Central Food Laboratory and a denial of that right on account of the deliberate conduct of the Prosecution may lead to serious prejudice affecting the propriety of the conviction. This principle would be appli-

cable only to cases where the conduct of the Prosecution has resulted in the denial to the accused of an opportunity to exercise his right.

The provisions of section 13 and 5 of the Act are attracted when in effect the analysis of the sample sent to the Director of Central Food Laboratory is made by him on the basis of which he issued a certificate and that if for any reason no such certificate is issued, the report given by the Public Analyst does not cease to be evidence of the facts contained in it and it would not become ineffective merely because it could have been superseded by the certificate issued by the Director.

R. Veeramani, for Appellant.

M. Srinivasagopalan, for Respondents.

V S *Appeal allowed.*

Venkatadri, J.
19*th April*, 1968.

K. Anantha Narayanan *v.*
State of Madras.
W P No 2122 of 1965.

Madras Civil Service Classification and Control Orders, rule 17-*B—Alteration of date of birth in S S L C. Book—Proceedings against petitioner and punishment—Further proceedings for the same offence, under rule* 17-B*—Illegal—Constitution of India* (1950), *Article* 20 (2)*—Violation.*

For the offence of alteration of date of birth in the S S L C Government took proceedings against the petitioner and punished him It was because of that the then Assistant Collector dropped further action by the Department wherein the petitioner was working The petitioner was charged again by the Assistant Collector under 17-B of the Madras Civil Services Classification and Control Orders. In a petition under Article 226 of the Constitution

Held, the order is illegal and is liable to be quashed.

For the same offence after the Department of the State Government competent to proceed against the petitioner had charged him and punished him also, the Government cannot revive the proceedings once again by framing a different charge for the same offence and punish the petitioner severely. This is opposed to what is contained in Article 20 (2) of the Constitution

N. Srivatsamani, for Petitioner.

The Assistant Government Pleader, for Respondent.

V.S. *Petition allowed.*

Ismail, J.
23*rd August*, 1968.

Union of India *v*
Bharathi Line Ltd.
C.S. No. 159 of 1964.

Carriage of Goods by Sea Act (*XXVI of* 1925), *Schedule, Article IV, Clause* (2) *and Contract Act* (*IX of* 1872), *sections* 56 *and* 160*—Contract of carriage—Ship owner receiving cargo for delivering it to its owner—Vessel grounded but cargo inside intact—No action by ship owner for removing cargo and delivering the same—Nor owner of cargo asked to make their own arrangements for removal of cargo—Ship-owner's liability—Whether exonerated because of clauses of Bill of lading—Whether contract of carriage frustrated—Purchase of vessel for break up purposes—Nature, scope and extent of purchaser's liability.*

The clauses of the Bill of lading do not apply, since it cannot be said that there has been a loss arising directly or indirectly from any of the causes mentioned in

the clauses of the Bill of lading Even clause 2 of Article IV of the Schedule to the Indian Carriage of Goods by Sea Act, 1925 does not exonerate the first defendant from any liability because the loss, if any, in this case cannot be said to have arisen or resulted from any act, neglect, or default of the master, mariner, pilot or the servants of the carriers in the navigation or in the management of the ship The acceptance by the underwriters of the ship as constructive total loss will not affect any liability the first defendant may have towards the owners of the cargo so long as the cargo itself was rot lost and was intact in the vessel

There can be no frustration where the performance of the act remains physically and legally possible, though commercially unprofitable (on facts) Though impossibility contemplated by section 56 of the Indian Contract Act is not physical impossibility but impossibility in the practical sense, the mere unprofitability or expensiveness will not constitute impossibility so as to bring the case within the scope of section 56 So long as the coal was intact in the grounded vessel and so long as it is not shown or established that it was physically impossible to remove the cargo from the vessel and deliver the same to the Southern Railway, it cannot be said that the contract of carriage was frustrated Notwithstanding the grounding of the vessel, in view of the fact that the coal was intact it was still possible for the first defendant to remove the coal from the vessel and deliver the same to Southern Railway.

Applying the principles laid down by the cases reported in (1850) 19 Law J R (N S.) C P. 225, (1872) 4 P.C A. 222 at 228, (1872) L R 7 Q B 225, (1873-54) 5 P C A. 134, (1877) 2 A C 156 (1880) 16 Ch D 474, 48 Rev Reports 707, 130 Eng Rep 186, 1943 A C 32 and 1951 A C 820, it was held that as soon as the ship was grounded, the voyage has come to an end After the ship was grounded, it was the first defendant who had the custody and control over the cargo and it was the duty of the first defendant to arrange for the delivery of the cargo to the owners of the cargo or to ask the owners of the cargo to make their own arrangements for the removal of the cargo from the vessel *Held*, the first defendant had not taken necessary steps expected of it and had not discharged the duty which it owed towards the owners of the cargo and consequently it is liable to the owners of the cargo for the value of cargo D-1 has not discharged its duty either by itself or by constituting D-2 as its agent

Held further, there was no privity of contract between plaintiff and 2nd defendant and 2nd defendant did not take over a transfer of the rights and obligations of the first defendant in the coal cargo Second defendant was not under a legal liability to salvage the cargo from the wreck, but as a person in possession of the cargo belonging to the Southern Railway, it was bound to given an opportunity to and authorise the Railway to arrange for the removal of the cargo from the vessel and that it did not take reasonable and diligent steps for the salvage of the coal Plaintiffs are entitled to recourse against 2nd defendant in so far as the 2nd defendant was in possession of the cargo belonging to the plaintiffs

(1942) A C 154, A I R 1954 S C. 44 and A I.R 1960 S C 588, referred to

S Govind Swaminathan, *K Rajah Iyer* and *B. T Seshadri*, for Plaintiffs

V Thyagarajan for *King & Partridge*, *Alladi Subramaniam* and *Vedagiri Rama Sastri*, for Defendants

S V.J. *Suit decreed.*

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Natesan, J
30th August, 1968.

State of Madras *v*.
K. Venkataswami.
S.A No 1345 of 1964.

Madras Civil Services (Classification, Control and Appeal) Rules Rule 17 (e) (3) *and Fundamental Rules* 52, 53 *and* 54—*Employee suspended pending enquiry—Order of suspension not made subject to further orders—Dismissal of employee—Setting aside order of dismissal—Reinstatement of employee—Effect of—Whether original suspension order revoked—Fresh order of suspension pending enquiry—Dismissal of employee—Result of—Whether employee entitled to arrears of pay*

The clerk was reinstated and directed to join duty forthwith and so he joined. The order in effect wiped out the past and indicated *de novo* proceedings commencing with a fresh order of interim suspension

Clauses 1 to 3 of Fundamental Rule 54 should be considered together and it needs no emphasis that deprivation of any part of the pay would be a punishment

Held on facts, in the present case the original order of suspension was not made subject to further orders therein Once the order of dismissal was set aside and the plaintiff reinstated in service, the original order of suspension also got set aside. He might not have been actually on duty during the period but he had been kept out of duty In the absence of any statutory provision, any enactment or rule, the employee (plaintiff) will be entitled to pay during the period (interim suspension). The deeming provision in rule 17 (*e*) (3) of Madras Civil Services (Classification, Control and Appeal) Rules cannot apply to this case at all.

A I.R 1968 S C 800, referred to.

The Additional Government Pleader, for Appellant.

A. K Sreeraman, for Respondent

S.V.J.

Second Appeal dismissed ;
Leave granted.

Ramamurti, J
5th September, 1968

Saleh Bros *v*
Rajendran.
S A No 1065 of 1964

Transfer of Property Act (*IV of* 1882), *sections* 111 (*g*)(*h*), 112, 113 *and* 116—*Law relating to waiver of forfeiture and waiver of notice to quit—Same in England and India—Landlord issuing notice determining lease—Ejectment suit by landlord—Receipt of rent subsequent to notice and pending suit—Whether, by itself, amounts to waiver—Necessary ingredients to constitute waiver—Intention to treat the lease as subsisting essential—Principle underlying section* 112 *equally applies to section* 113

Law relating to waiver of forfeiture and waiver of notice to quit is the same in England and India

The principle underlying section 112, that after the landlord had elected to avail himself of the forfeiture and had given notice in writing to the lessee of his intention to determine the lease and followed it up by a suit in ejectment there is no waiver, would equally apply to section 113 where the landlord had instituted a suit in ejectment, preceded by the issue of a notice determining the lease The absence of a corresponding provision in section 113 is of no significance and does not manifest any intention on the part of the Legislature to make any difference Under section 111 (*h*), the issue of notice of its own force and without anything more, after the expiry of the period, determines the lease

The plain language of section 113 indicates that a waiver does not *ipso facto* result from any act of omission or commission on the part of the lessor, but the act must be such as clear evidence of the lessor's intention to treat the lease as subsisting. It is the intention of the lessor to treat the lease as subsisting which is the predominant and deciding factor in bringing about a waiver and not any particular act by itself. There is no warrant for the view that mere receipt of rent, whatever may be the intention of the lessor, should of its own force, divorced from the circumstances of the case, be regarded as amounting to a waiver. The receipt of rent may only create a presumption and cannot of its own force amount to waiver. In order to constitute a waiver, both the limbs of section 113 must concurrently operate, which means, an act by itself and of its own force, without reference to the intention of the parties, cannot bring about a waiver.

Preponderance of authority is that in addition to the receipt of rent by the landlord there should be proof that the receipt was with the intention to treat the lease as subsisting There should be either an express contract or conduct of parties justifying the inference that, after the determination of the contractual tenancy, the landlord's intention was that the occupation of the premises was as a tenant; whether the conduct of the parties justifies such an inference would undoubtedly turn upon the facts and circumstances of each case.

Held on facts, that it is impossible to attribute to the owner the intention either to continue the relationship of landlord and tenant or to create a new tenancy. The circumstance that in the receipt issued by the owner the word 'rent' is used is not decisive of the question.

I.L R. 7 Cal. 132, 24 M L J 263; A I R. 1926 Cal. 763; A.I.R. 1945 Bom. 132; A.I.R. 1948 Oudh 127; A I R. 1949 F.C. 124; A I R. 1951 S.C 285; A.I.R 1953 Nag. 219; A.I.R. 1964 Cal. 404; A I R. 1956 All. 175; A I.R. 1956 Punj. 246; A.I R. 1957 Cal. 627; A I.R. 1957 Pat. 206; A.I.R. 1959 Pat 128; A.I.R. 1959 A.P. 346, A I.R. 1961 S C. 1067; A.I R. 1962 S.C. 847; A.I.R. 1966 All. 623; (1967) 1 M.L J 337; (1968) 2 M.L.J. 42 (S C.); A.I.R. 1968 S.C. 919, 15 M. & W 178; L.R 7 C.P. 360, (1920) 2 K. B 315; (1923) 2 Ch. 347; (1916) 2 A.C. 575 and (1942) 2 A.E R 674, referred to.

S. Kuppuswamy, for Appellant.

A. Sundaram Iyer, and *V. N. Srinivasa Rao*, for Respondents.

S.V.J.

Second Appeal dismissed;
No leave.

Krishnaswamy Reddy, J.
16*th April*, 1968.

Sheik Abubaker *In re*.
Crl R C No 319 of 1968.
Crl R P No 313 of 1968.

Madras City Police Act (*III of* 1888), *section* 65—*Person found to be in possession of large sums of money—No reason to believe property was stolen or obtained fraudulently—Mere inability to account for the money—Not to lead to inference of property having been stolen or obtained fraudulently.*

The petitioners were found to be in possession of huge sums of money There were no materials to show that there was reason to believe that the cash was stolen property or property fraudulently obtained On the question whether a conviction under section 65 of the Madras City Police Act is sustainable

Held, the prosecution, to sustain the conviction under section 65, must first prove that there is reason to believe, property in possession of a person to be stolen property or property fraudulently obtained, before such a person is called upon to account for such possession. If a person is unable to account for the possession of the property, that circumstance alone cannot be taken for believing that it is stolen property or property obtained by fraudulent means

The conviction cannot be sustained.

G. Gopalaswamy, for Petitioners.

Calvin Jacob for the Public Prosecutor on behalf of the State

V. S.

Revision allowed.

Natesan, J.
20*th September*, 1968.

Venkatasubramanya Iyer *v.*
S. Abdul Wahab.
S. A. No 787 of 1965.

Madras Buildings (*Lease and Rent Control Act* (*XVIII of* 1960), *sections* 4, 5, 6 *and* 7 (1) *and* (2)—*Transfer of Property Act* (*IV of* 1882), *section* 105—*No fair rent fixed under the Rent Control Act—Agreement between landlord and tenant enhancing the rent after the commencement of the Act—Validity of—Whether unenforceable*

What section 7 (2) of the Madras Rent Control Act prohibits is the receipt by the landlord of any amount as premium or like sum in addition to the agreed rent. The expression 'agreed rent' has not been defined in the Act and its ordinary meaning is, rent agreed between the parties not any unilateral demand to which the tenant has not consented The contention of Counsel for the appellant that there can be no fresh agreement for rent after coming into force of the Act, cannot stand, as the Act deals with tenancies commenced before the Act and those which may come into existence after the Act.

There is no specific provision in the Act, prohibiting the parties to agree between themselves and vary the prevailing rent as long as fair rent has not been fixed under the provisions of the Act Restrictions on the rights of parties to enter into a contract cannot be imposed purely by implication, particularly when the existence of such right is not inconsistent with the provisions of the Act The Act makes a distinction between a case where the fixed rent has been fixed and the one where the fixed rent has not been fixed under the Act.

The findings of the Courts below as to the truth or otherwise of the agreement is essentially a question of fact C R P. No 2319 of 1965 and (1966) 2 M L.J. 139 : (1966) M.L.J. (Crl) 570, followed.

(1948) 1 M L.J. 51 ; (1953) 1 M.L J. 490 ; (1958) 2 An. W.R. 493 ; (1962) 1 M.L.J. 272 ; A I R. 1965 A.P 33 and L R. (1915) 3 K B. 485 at 492, referred to.

R. Gopalaswami Iyengar and *N.R Natarajan*, for Appellant

K.S. Naidu and *M Mani Narayanan*, for Respondent.

S.V.J.

Second Appeal dismissed;
No leave

Natesan, J
20th September, 1968.

Venkatasubramanya Iyer *v.*
Abdul Wahab.
C.R P. No 563 of 1968.

Madras Buildings (*Lease and Rent Control*) *Act* (*XVIII of* 1960), *section* 10 (2) (*i*), 11 *and* 25 *and Civil Procedure Code* (*V of* 1908), *section* 115—*Eviction petition on ground of wilful default*—'*Wilful default*'—*What is*—Bona fide *dispute between parties as to payment of enhanced rent—Room for honest misunderstanding on both sides—Non-payment of difference in rent—Whether amounts to wilful default—Scope of revisional jurisdiction under section* 25—*Wider than section* 115, *Civil Procedure Code.*

To arrive at a finding that the tenant is in wilful default, the mere fact that the tenant is in arrears of rent would not be enough and the Court has to consider whether there has been intentional violation of a clear obligation to pay the rent. To find whether the omission to pay rent is intentional various attendant circumstances have to be examined It is the state of mind of the tenant, with respect to the default that has to be found, no direct evidence can be had on the matter, and, if there are circumstances from which the Court can reasonably infer that there was really no intention to withhold deliberately the rents which the tenant knew were due and payable, the Court will not infer wilful default.

(On facts *held*, there has been a dispute between the parties and it cannot be said that the same is not *bona fide*. The fact that the civil Court holds that the rent payable right through from Masi 1960 has been enhanced cannot, having regard to all the aspects of the case, make the non-payment of arrears of rent a wilful default. Non-payment of difference in rent will not amount to wilful default entitling the landlord to an order of eviction).

Though the jurisdiction is revisional and therefore not as wide in scope as an appellate jurisdiction, this Court, in this revisional jurisdiction, has to satisfy itself not only as to legality or regularity of the proceedings or orders before the Courts below but also as to their propriety. Apart from the fact that the question whether there is wilful default or not is not a pure question of fact, the jurisdiction under section 25 of the Act to examine the propriety of an order necessarily involves the power to canvass the correctness of the order and examine the circumstances in which it has been passed, the propriety of the order being something different from its legality or regularity. The powers under section 25 are wider than those of this Court in revision under section 115, Civil Procedure Code

(1956) 69 L.W 72, referred to.

R. Gopalaswami Iyengar and *N. R. Natarajan*, for Petitioner.

K. S. Naidu and *M. Mani Narayanan*, for Respondent.

S.V.J. *Revision allowed.*

Ramamurti, J
20th September, 1968

M Devasakayam *v.*
Thiruveedi Amman Koil Devasthanam.
S A No 1038 of 1964.

Madras City Tenants Protection Act (*III of* 1922), *sections* 9 *and* 11—*Trusts Act* (*II of* 1882)—*Temple property—Lease by trustees of the temple in favour of one of them—Eviction suit by temple against lessee—Whether lessee (trustee) entitled to benefits under section 9—Power of trustee concerning trust property—Lease whether fresh or renewal.*

Held, in the instant case, it is not a question of mere enhancement of rent. A perusal of Exhibit A shows that the intention of the parties was to enter into a distinct new arrangement that the lease should be only for a period of one year. The fixation of a period of one year proves that there has been a fresh lease If the understanding between the parties was that the tenant who came in 1953 was to continue to enjoy the benefits under the Act and that the temple desired only an enhancement of rent, Exhibit A would have been worded differently

Appellant is also one of the trustees of the temple and the lease was executed by all the trustees including the appellant as lessors representing the temple in favour of the defendant as lessee It is settled law that a trustee is absolutely prohibited from entering into any transaction concerning trust property, whether it is moveable or immoveable, whether it is a sale or a lease and there is no distinction whatsoever between one transaction and another, the principle being that he who undertakes to act for another in any matter cannot in the same matter act for himself and that a trustee should not place himself in any situation where a direct conflict between his duty to the trust and his private interest arises

Held, when the temple seeks to recover possession of the property it is obvious that the appellant cannot claim any right under the lease deed.

(1964) 77 L W. 522 ; (1962) 1 M L J 116, referred to.

A Dorairaj, for Appellant.

N.S. Raghavan, for Respondent.

S.V J ——— *Second Appeal dismissed ; No leave.*

Venkataraman and Ramamurti, JJ
26th September, 1968.

Dorairaj *v.*
Karuppiah Ambalam.
A. S No 349 of 1962.

Partnership Act (*IX of* 1932), *section* 42—*Partnership consisting of two partners—Death of one of them—Effect of*

Civil Procedure Code (*V of* 1908), *section* 20 *and Order* 8, *rules* 3 *to* 5—*Institution of suit—Jurisdiction—Suit for accounts of dissolved partnership—Assets of partnership in the shape of immovable properties in foreign country—No dispute about title—Institution of suit where defendant resides—Maintainability—Absence of specific denial in written statement—Effect of*

Registration Act (*XVI of* 1908), *sections* 1 (2) *and* 17 (1) (b)—*Object and applicability of—Compromise deed—Immoveable properties situate in foriegn country—Whether requires registration—Admissibility of.*

As pointed out in *Commissioner of Income-tax, M P*, v *Seth Govindram Sugar Mills in* (1965) 2 I T J 170 (1965) 2 S C J 289 (1965) 57 I.T R 510 (1965) 3 S C R. 488 A I R 1966 S C 24, a firm of two partners necessarily gets dissolved on the death of one of the partners and to such a partnership the phrase "Subject to contract between the partners" cannot apply, because a partnership necessarily involves a minimum of two partners. Even where the legal representatives of the deceased partner takes his place and carry on the business with other partners it will only be a partnership.

The important principle to bear in mind is that the suit here is essentially an action *in personam* against a defendant who is amenable to the jurisdiction of the Sub-Judge's Court It is an accepted principle that in such cases the Court (where he resides) will have jurisdiction to try the action The principle on which the jurisdiction of Indian Court has been recognised is that the normal remedy of the parties is only to sell the assets of the partnership and to a share thereof after meeting the debts.

Held, the Sub-Judge had jurisdiction to entertain the suit, and if it becomes necessary, the Court would have jurisdiction to appoint a receiver to realise the assets of the partnership (including immoveable properties) situate in Malaya and under the rule of private international law and comity of nations, the foreign Court in Malaya is bound to recognise the appointment of the receiver Even if it should become necessary for the receiver to remove any impediment or obstruction from any third party in Malaya this receiver can seek the aid of the foreign Court and the action will be tried according to the laws prevailing in Malaya

6 E R 1232 ; 8 L J Ch 297 ; 24 L J Ch 121 ; 30 L J. Ch 583 ; (1883) 9 A C 34, (1894) W N 123 ; (1900) 1 Ch 602 ; I L.R 41 All 513 ; I L R 45 Bom 1228 ; I L R. 55 Bom 309 ; I L R 19 Lah 305 , I L R (1951) 2 All 703 , (1955) 2 M L J. 414 and (1966) 2 An. W.R. (S C) 60. (1966) 2 M L J (S C) 60. (1966) 3 S C R. 400 : (1966) 2 S C J. 490, referred to

(1946) 1 M.L J 310: I L R (1946) Mad. 858, distinguished.

Halsbury's Vols. 7 and 32, Cheshire Private Internationl Law (7th Edn) Chapter XVI, Diceys Conflict of Laws (7th Edn) and Kerr on Receivers (13th Edn.) referred to.

Held, (1) Exhibit P-5 merely recites the pre-existing rights of the parties in the immoveable property of the partnership in Malaya ; (2) it does not deal with any specific immoveable property and allot it to one or the other of the parties , (3) Indian Registration Act and in particular section 17 (1) (*b*) could apply only to India and cannot apply to immovable properties situate in Malaya. The object of the legislation is only to provide for compulsory registration in respect of immoveable property in India so that the title may be clear, and it is no concern of the Indian Legislature to legislate with respect to the title to immoveable property in Malaya. Indian Registration Act could not prescribe for the registration of a document like Exhibit A-5 in so far as it deals with immoveable property situate in Malaya. (Held document was admissible)

I L R. 11 Pat 272, I L.R 5 Bom 232 ; I L R. 41 Cal. 972 ; I.L R 43 Mad 288; I.L.R 52 Mad. 175 , A I R 1957 Assam 153 , I L R (1964) 1 Mad 63 · (1960) S C J. 416 ; (1966) 2 S C J 440 and (1893) A C 602 (H L), referred to.

Written statement does not specifically traverse the allegation (period of absence) and hence first defendant must be deemed to have admitted the period of his absence.

A. Sundaram Iyer, for Appellant.

T. R. Srinivasan, for Respondents.

S.V.J. *Appeal allowed and remanded.*

[SUPREME COURT.]

M. Hidayatullah, C J, R. S. Bachawat, C. A. Vaidialingam, K. S. Hegde and *A N. Grover, JJ.* *27th March,* 1968.

B. S. Vadera *v.* Union of India. W. Ps Nos. 96 and 165 of 1967.

Railway Establishment Code—Article 309 *of the Constitution—Rules framed by the President applicable to the non-gazetted Railway Servants, Rules* 157*—Indian Railway Board Act* (*IV of* 1905), *section* 2.

Mr. Mehta, by reference to the provisions of the Indian Railway Board Act, 1905 (IV of 1905), and to the decision of this Court in *State* v *Padmanabhacharya,* (1967) 1 S C J. 256 : (1966) 1 S C.R 994, urged that the 2nd respondent had no power to frame a rule, having retrospective effect. In our opinion, this contention cannot be accepted. Act IV of 1905 is an Act to provide for investing the Railway Board with certain powers or functions, under the Indian Railways Act, 1890. The preamble to that Act shows that a Railway Board has been constituted, for controlling the administration of Railways in India. Section 2 provides that the Central Government may, by notification, in the Official Gazette, invest the Railway Board, either absolutely, or subject to conditions, with powers, or functions, stated therein That statute, does not, in any way, advance the petitioner's contention. As we shall presently show, the decision of this Court, referred to above, does not also support the petitioners.

In this case, there is no Act of the appropriate Legislature, regulating the recruitment and conditions of service, under the 2nd respondent and, therefore, the main part of Article 309 is not attracted But, under the Proviso therein, the President has got full power to make rules, regulating the recruitment, and conditions of service, of persons, under the 2nd respondent. Further, under the Proviso, such person, as may be directed by the President, can also make rules, regulating the recruitment and conditions of service, of persons, under the 2nd respondent The rules so made, either by the President, or such person, as he may direct, will have currency, until provision, in that behalf, is made by or under an Act, of the appropriate Legislature, under Article 309.

It is also significant to note that the proviso to Article 309, clearly lays down that any rules so made shall have effect, subject to the provisions of any such Act. The clear and unambiguous expressions, used in the Constitution, must be given their full and unrestricted meaning, unless hedged in, by any limitations. The rules which have to be subject to the provisions of the Constitution, shall have effect, 'subject to the provisions of any such Act.' That is, if the appropriate Legislature has passed an Act Under Article 309, the rules, framed under the Proviso, will have effect, subject to that Act; but in the absence of any Act, of the appropriate Legislature, on the matter, in our opinion, the rules, made by the President, or by such person as he may direct, are to have full effect, both prospectively and, retrospectively. Apart from the limitations, pointed out above, there is none other, imposed by the proviso to Article 309, regarding the ambit of the operation of such rules. In other words, the rules, unless they can be impeached on grounds such as breach of Part III, or any other constitutional provision, must be enforced, if made by the appropriate authority.

S. K Mehta and *K L. Mehta,* Advocates of *M/s K. L Mehta & Co* , for Petitioner (In W P. No. 96 of 1967)

A K. Sen, Senior Advocate (*A. P. Chatterjee,* Advocate and *M. M Kshatriya,* Advocate of *M/s. Kshatriya & Chatterjee,* with him), for Petitioner (In W P. No. 165 of 1967).

C. K. Daphtary, Attorney-General for India and *Dr. V. A Seyid Muhammad,* Senior Advocate (*R N Sachthey,* Advocate, with him), for Respondents Nos. 1, and 2 (In both the Petitions).

B R. G. K Achar, Advocate, for Respondents Nos 3, 6 to 9, 13, 15, 17, 18, 21, 26, 29, 30, 31, 36, 39 to 45, 47, 50 to 55, 58, 61, 64, 66, 69, 76, 77, 81, 82, 87, 91, 94, 96, 97, 103 to 105, 108, 123, 136 and 150 (In W P. No. 96 of 1967)

G. R. —— *Petitions dismissed.*

[SUPREME COURT.]

M Hidayatullah, C J, J. C. Shah, S. M Sikri, R. S Bachawat, G. K. Mitter, C. A. Vaidialingam and *K. S Hegde, JJ*
10*th April*, 1968

State of Maharashtra *v.* Madhavrao Damodar Patil.
C As. Nos. 2239 to 2250 of 1966 and 694 of 1967.

Maharashtra State Agricultural Lands (Ceiling on Holdings) Act (1961) *as amended by Maharashtra Act (XIII of* 1962) *(here in after referred to as the Impugned Act) —General Clauses Act (X of* 1897), *Article* 367 *of the Constitution and* 372 *of the Constitution—9th Schedule of the Constitution—Article* 14 *of the Constitution.*

Accordingly we must overrule the first submission made by the learned Counsel for the appellant and hold that Article 31-B protects the impugned Act including the amendments made in it upto the date of its incorporation into the Ninth Schedule The impugned Act cannot, therefore, be challenged on the ground that it violates Articles 14, 19 and 31 of the Constitution. We, accordingly, agree with the High Court that section 28 which was originally held by the High Court to violate Article 14 of the Constitution is now protected under Article 31-B from attack on the ground that it infringes Article 14.

Coming to the second point, the learned Counsel merely mentions the point. He says that there was no majority for any particular ratio as five Judges held the Seventeenth Amendment to be void because it contravened Article 13 (2), but by applying the doctrine of "prospective overruling" they declared that their decision would not affect the validity of the Seventeenth Amendment Hidayatullah, J., as he then was, on the other hand did not apply the doctrine of "prospective overruling , but held section 3 (2) of the Seventeenth Amendment was a valid amendment of the Constitution. We are, however, bound by the result arrived at by this Court in that decision and the result that the Seventeenth Amendment is valid is binding on us We may mention that Mr Mani, appearing for one of the interveners, also raised this point but ultimately asked for permission to be allowed to withdraw the point.

Coming to the third point, the learned Counsel for the appellant contends that section 28 is a law with respect to Entry 52 of List I, and therefore beyond the competence of the State Legislature.

There cannot be any doubt that the State Legislature is competant to enact provisions regarding the production and supply of raw materials from land which has vested in the State and for the full and efficient use of such land and its efficient management.

In the result Civil Appeal No 694 of 1967 is dismissed. The other appeals (C As. Nos 2239-2250 of 1956) are allowed, judgment of the High Court, in so far as it declared section 28 void, set aside and the petitions out of which these appeals arose dismissed There will be no order as to costs in all the appeals.

C K Daphtary, Attorney-General for India (*M. S K. Sastri* and *S P. Nayar*, Advocates, with him), for Appellant (In C. As. Nos. 2239-2250) of 1956.

F. S Narriman, D S. Nargolkar and *K. R Chaudhuri*, Advocates, for Respondents (In C A No. 2239 of 1966).

R V. S Mani, Advocate, for Intervener No. 1 (In C. A. No 2239 of 1966)

D. P. Singh, Advocate of *M/s. Ramamurthi & Co.*, for Intervener No. 2 (In C. A. No. 2239 of 1966).

F. S. Narriman and *Miss Bhuvanesh Kumari*, Advocates, *O C Mathur* and *Ravinder Narain*, Advocates of *M/s J. B Dadachanji & Co* and *D.M. Popat, S I. Thakore* and *B Parthasarathy*, Advocates, for Appellants in C A. No. 694 of 1967.

C. K. Daphtary, Attorney-General for India, (*S. P. Nayar*, Advocate, with him) for Respondents Nos 1 to 3 (In C. A. No 694 of 1967)

S K. Mehta, Advocate of *M/s K. L Mehta & Co*, for Intervener (In C A. No. 694 of 1967)

G.R. *Appeal dismissed.*

[SUPREME COURT]

R. S. Bachawat and
K S Hegde, JJ
11th April, 1968.

Mahesh Bhagat *v.*
Ram Baran Mahto.
C.A No. 394 of 1965.

Bihar Tenancy Act (*VIII of* 1885), *section* 21 (1)—*Mortgagee inducting tenants on the lands—Whether a lease or usufructuary mortgage.*

The gist of the document was a letting of the village for the full term of 40 years. There was no express or implied grant of a right of redemption of the village on repayment of the loan The document was not intended to create a relationship of debtor and creditor or a security for the repayment of a debt. In our opinion, the transaction was a lease and not a usufructuary mortgage

The general rule is that no one can confer on another a better title than he himself has The Bhikhanpur Kothi could not make a grant of the right to occupy the lands after the expiry of the lease in their favour. But the right of occupancy is not the creation of any grant from the Kothi It is conferred by section 21 (1) As the tenants are raiyats, the law steps in and protects them from eviction.

In the present case the defendants are settled raiyats of the village They held the lands as tenants of the tenure holder. There was no prohibition in the document creating that tenure against inducting raiyats on the land In *Atal Chandra Rishi* v *LakhiKaram Ghose* (1909) 10 C L J. 55, the proprietor granted an ijara stipulating that ijaradar would not be competent to grant a sub-lease which was to continue after the expiry of the ijara. The ijaradar settled the lands with a tenant The possession of the tenant in its inception was lawful The Calcutta High Court held that inspite of the stipulation in the ijara the tenant became a raiyat whose rights were regulated by the provisions of the Bengal Tenancy Act and he could be rejected by the proprietor only on one or more of the grounds specified in section 44 Similarly in this case the tenancy in its inception was lawful. The tenants became raiyats and as they were settled raiyats of the village they acquired rights of occupancy and could not be ejected except on one or more of the grounds mentioned in section 25.

Sarjoo Prasad, Senior Advocate (*D. Goburdhun*, Advocate, with him), for Appellant.

Yogeshwar Prasad and *Hardev Singh*, Advocates, for Respondents Nos. 1 and 13 to 18

G R. *Appeal dismissed*

[SUPREME COURT]

R S. Bachawat and
K S. Hegde, JJ
11th April, 1968.

Dhanki Mahajan *v*
Rana Chandubha Vakhatsing
C A No 38 of 1965.

Civil Procedure Code (*V of* 1908), *section* 115—*Provinces and States* (*Absorption of Enclaves Order* 1950—*Bombay Agricultural Debtors Relief Act* (*XXVIII of* 1939)—*Principles of* res judicata.

As in our opinion, the decision of the Board and of the appellate Court that each of the respondents is liable for the entire mortgage debt is correct in law, it is not necessary for us to consider the other question whether the applications from which this appeal arises are barred by the principles of *res judicata*. For the same reason we are also not going into the question whether on the facts of this case it was competent for the High Court to reverse the decision of the appellate Court by having recourse to its powers under section 115 of the Code of Civil Procedure.

Applying its earlier decision reported in *Tribhovandas Purshottamdas Thakkar* v. *Ratilal Motilal Patel*, (1968) 2 S C J. 92 : A I.R 1968 S C 372, the Court held that a single Judge of a High Court is ordinarily bound to accept as correct judgments of Courts of co-ordinate jurisdiction, of Division Benches and Full Benches of his Court.

For our present purposes, all that we have to see is whether on the basis of the provisions of the Act, there is any justification for departing from the ordinary rule that in the case of a joint debt, each one of the debtors is liable for the entire debt We see no such justification.

Interpreting the provisions of the Bombay Act in *Ambu Rama Mhatro* v. *Bhan Halya Pata*, A I.R 1957 Bom 6 the Bombay High Court, speaking through Shah J., (as he then was) held that it cannot be disputed that when a mortgage is created jointly on property in which several persons are interested each of the mortgagors is liable in the absence of contract to the contrary to pay the entire debt, and the liability of a mortgagor is not proportionate to the extent of his interest in the mortgaged property ; and that position is not altered under the provisions of the Bombay Act This decision was followed by Bhagwati J , (as he then was) of the Gujarat High Court in *Dave Sadashiv* V *Jayakrishna* v *Rana Govubha*, (1962) 3 Guj.L R. 1007. We are in agreement with that conclusion

I. N. Shroff, Advocate, for Appellants.

J. A. Baxi, Advocate, and *K L. Hathi* and *Atiqur Rehman*, Advocates of *M/s. Hathi & Co.*, for Respondents Nos. 1 to 3.

G.R. *Appeal allowed.*

[SUPREME COURT.]
M. Hidayatullah, C J., J C. Shah, S. M. Sikri, R. S. Bachawat, G. K. Mitter, C. A. Vaidialingam and *K S. Hegde, JJ.*
19th April, 1968.

Ramanilal Gulabchand *v* State of Gujarat.
C.A. Nos. 1751-1773, 1799-1916, 2451-2452, 2187-2189, 2214-2220, 2358-2372, 2391, 2577-2582, 66 and 48-73, 88-104-106, 107, 620, 705 to 708, 715, 719, 814-852, 894 to 908, 1004, 1065-1069 and 1557 of 1967.

Bombay Tenancy and Agricultural Lands Act (*LXVII of* 1948), *section* 65—*Amending Act* (*XIII of of* 1966), *section* 35 (1)—*Articles* 31-*A and* 31-*B*, 14, 19 (1) (*f*) (g) *and* 31 *of the Constitution—Breach of Principles of Natural Justice—Exercise of powers* mala fide *and actuated by political consideration.*

The argument of the learned Attorney-General that the general scheme of the Preamble and the provisions of section 44 could be read (and we do not decide that they can be so read) to give validity it is clear that the Preamble talked only of land holders and the addition of the words to section 65 is intended to apply the principle to non-landholders Similarly the provisions of section 44 under the unamended Act, could not have been made applicable to such-landholders The amendment of section 65 was really carrying the Act into new fields and not being considered as an amendment of the Constitution. How can it claim the protection given to the un-amended Act. Therefore Article 31-B and the Ninth Schedule cannot be called in aid.

The third part namely modification of rights have been considered by us but this Court in *Thakur Raghubir Singh v Court of Wards, Ajmer and another*, (1953) S C.J. 555 : (1953) S C.R. 1049 gave a limited meaning to the expression and that case has been applied on many occasions.

Thus mere suspension of the right of management of one's property withou modification of the proprietary right was not held sufficient to give protection of Article 31-A (1) (*a*) We would have given more thought to this matter but for the re-enactment of Article 31-A with retrospective effect after *Thakur Raghubir Singh's case* (1953) S C.J 505, which did not interpret the Article as it is today. In view of the retrospective amendment of the Article it may be said that this Court interpreted an article which never was enacted in that form. Therefore the less we speak of the matter from the angle of observations in *Thakur Raghubir Singh Case*, (1953) S.C.J. 505 the better But even so the matter is not advanced much further.

B.R.L. Iyengar, Senior Advocate (*M/s Ravinder Narain* and *O.C. Mathur*, Advocates of *M/s J.B. Dadachanji & Co.*, and *B. Dutta* and *Miss Bhuvanesh Kumari*, Advocates, with him, for Appellants) (In all the Appeals).

C.K. Daphtary, Attorney-General for India and *N S Bindra*, Senior Advocate (*M/s. R.H Debhar* and *S P. Nayyar*, Advocates, with them, for Respondents.) (In all the Appeals).

G.R. *Appeals allowed.*

[SUPREME COURT.]

J.C. Shah, V. Ramaswami and *G.K. Mitter, JJ.* 19*th April*, 1968

Bulchand Chandiram *v.* The Bank of India Ltd. C.A No. 690 of 1967.

Displaced Persons (Debts Adjustment) Act (LXX of 1951) *hereinafter referred to as the said Act, section* 5, *section* 17—*Definition of debt under section* 2 (6)—*Contract Act (IX of* 1872), *section* 43—*General Clauses Act (X of* 1897).

The High Court has observed, on the statement of the appellant himself, that his paying capacity far exceeded the aggregate debt due from him and it was therefore a fit case in which interest at 4 per cent should be allowed to the Bank from 15th August, 1947 to 10th December, 1951. In our opinion, the finding of the High Court on this point is supported by proper evidence We accordingly reject the argument of the appellant on this aspect of the case.

It was argued on behalf of the appellant that the High Court fell into an error in construing the provisions of section 22 in the context of section 43 of the Indian Contract Act which states that " when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise". Mr. Chagla contended that this section has no application in view of the overriding effect of section 3 of the said Act It is not necessary, in our opinion, to decide this point in the present case. We shall assume in favour of the appellant that section 43 of the Indian Contract Act has no application. Even upon that assumption the plea of the appellant for apportionment of the debt must be rejected because the High Court has found, upon examination of the evidence, that the liability both on the Loan Account and on the Cash Credit Account was undertaken solely by the appellant The finding of the High Court on this point is supported by paragraphs 12 and 15 of the petition of the appellant. In these two paragraphs the appellant admitted that he had opened the Cash Credit Account with the Bank and that he had taken the loan against mortgaged securities mentioned in Schedule G to the petition. We see no reason for differing from the finding of the High Court. The liability on the Loan Account and on the Cash Credit Account was soely that of the appellant and therefore the question of apportionment of the debt under section 22 of the said Act does not arise.

In the present case therefore there is an absolute assignment of the policies in favour of the Bank and the policies were also in its possession. In our opinion, section 17 of the Act applies and unless realisation was in excess of the debt due the appellant was not entitled to refund. We accordingly reject the argument of the appellant on this aspect of the case.

M.C. Chagla, Senior Advocate (*B.R. Agarwala* Advocate, of *M/s. Gagrat & Co.*, with him), for Appellant.

S.T. Desai, Senior Advocate (*Miss. Bhuvanesh Kumari*, Advocate with *J.B. Dadachanji, O.C Mathur* and *Ravinder Narain*, Advocates of *M/s. J.B Dadachanji & Co.*, with him), for Respondent.

G.R. *Appeal modified and dismissed.*

[SUPREME COURT.]

J C. Shah, V. Ramaswami, and *G K. Mitter, JJ.* *19th April*, 1968

Gopal Krishnaji Ketkar *v.* Mohd Haji Latif. C A No. 954 of 1965.

Bombay Public Trusts Act (*XXIX of* 1950) *hereinafter referred to as to the Act, sections* 18, 70—*Fiduciary position of a Manager of a Dargah—Production of accounts.*

He also admitted that " he had got record of the Dargah income and that account was kept separately". But the appellant has not produced either his own accounts or the account of the Dargah to show as to how the income from plot No. 134 was dealt with. Mr. Gokhale, however, argued that it was no part of the appellant's duty to produce the accounts unless he was called upon to do so and the onus was upon the respondents to prove the case and to show that the Dargah was the owner of plot No 134. We are unable to accept this argument as correct Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. *Murgesam Pillai* v. *Manickavasaka Pandara*, (1917) I L R 40 Mad 402 : 32 M L J. 369 · (1917) 44 I A 98, at p 103.

This decision of the *Privy Council* was cited in *Civil Appeal No* 941 of 1965 decided on *15th April*, 1968 , *Biltu Ram and others* v *Jainandan Prasad and others*.

This Court also distinguished another ruling of the Privy Council *Bilas Kunwar* v *Desraj Ranjit Singh* (1915) 29 M L J. 335 L R. 42 I A. 202, at page, 206. with the following observations

" The observations of the Judicial Committee do not support the proposition that unless a party is called upon expressly to make an affidavit of documents and inspection and production of documents is demanded, the Court cannot raise an adverse inference against a party withholding evidence in his possession. Such a rule is inconsistent with *Illustration* (*g*) of section 114 of the Evidence Act, and also an impressive body of authority."

H R Gokhale, Senior Advocate, (*W P. Oka, S W Oka* and *Ganpat Rai*, Advocates with him), for Appellant.

Danial Latifi, Senior Advocate, (*Hardev Singh*, Advocate with him), for Respondents Nos 3 and 4

M S K. Sastri, and *R H Dhebar* Advocates, for Respondent No. 5

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J.C Shah, V. Ramaswami, V Bargava, C.A. Vaidialingam and *A N. Grover, JJ.*
22nd April/2nd day of May, 1968

Hadibandhu Das *v.* District Magistrate, Cuttack.
C.A No. 1210 of 1968.

Preventive Detention Act (IV of 1950), *sections* 3 (1) (a)(*ii*), *sections* 7, 10, 11 (*a*)—*Article* 22 (5) *of the Constitution—Amending Act (LXI of* 1962), *section* 13 (2).

The Act authorises the Executive to put severe restrictions upon personal liberty of citizens without even the semblance of a trial, and makes the subjective. satisfaction of an executive authority in the first instance the sole test of competent exercise of power. We are not concerned with the wisdom of the Parliament in enacting the Act, or to determine whether circumstances exist which necessitate the retention on the statute book of the Act which confers upon the Executive extraordinary power of detention for long period without a trial But we would be loath to attribute to the plain words used by the Parliament a restricted meaning so as to make the power more harsh and its operation of a restricted interpretation without any indication by the Parliament of such an intention

A.S R. Chari, Senior Advocate (*Vinoo Bhagat,* Advocate and *Ravinder Narain,* Advocate of *M/s. J B. Dadachanji & Co* with him) for Appellant.

Niren De, Solicitor-General of India and *G.R Rajagopal,* Senior Advocate (*R.N. Sachthey,* Advocate with them) for Respondents

G.R. *Appeal allowed*

[SUPREME COURT]

R S. Bachawat, J M Shelat and *A N Grover, JJ.*
22nd April, 1968.

Maganlal Chhotalal Desai *v.* Chandrakant Motila
C A No. 392 of 1965.

Bombay Rents Hotel and Lodging House Rates Control Act (LVII of 1947) *sections* 12 (1) *and* 12 (2) (3) (*b*)—*Section* 115, *Civil Procedure Code (V of* 1908).

Now the right of recovery of the excess rent paid before 4th August, 1954 became barred on and after 4th February, 1955. Within that period the defendant took no steps for recovery of the amount by filing a suit or making a deduction As the claim for recovery of the amount became barred after 4th February, 1955, he could not thereafter deduct it from the rent falling due As a matter of fact, he did not deduct it from rent at any time Instead of making any deduction he filed a suit for its recovery. The overpayments cannot now be deducted from or adjusted against the rent falling due since 4th August, 1954. It follows that the rent was in arrear.

In these circumstances, the defendant could not claim protection of section 12 (1) of the Rent Act During the pendency of the suit he did not pay the standard rent due from him from 4th August, 1954 nor was he ready or willing to pay it. Instead of showing his readiness and willingness to pay the rent due he claimed that he was not liable to pay any amount at all.

Likewise he could not claim the protection under section 12 (3) (*b*). Before the first hearing of the suit on 26th December, 1957 or any other date fixed by the trial Court he did not pay or tender in Court the standard rent then due from him. Nor did he thereafter continue to pay or deposit in Court such rent till the suit was finally decided It follows that the defendant cannot claim protection from eviction under the Rent Act The High Court therefore rightly decreed the suit for eviction.

In the result, the appeal is dismissed. We direct that execution of the decree for eviction be stayed for a period of one year from today. In all the circumstances of the case, we make no order as to costs.

M.C. Chagla, Senior Advocate (*B.R. Agarwala* Advocate of *M/s. Gagrat & Co.*, with him), for Appellant.

S T Desai, Senior Advocate (*P C. Bhartari*, Advocate and *J. B. Dadachanji*, *O.C. Mathur* and *Ravinder Narain*, Advocates of *M/s. J. B. Dadachanji & Co.*, with him), for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S.M. Sikri, J.M. Shelat,
and *V. Bhargava, JJ.*
23rd April, 1968.

R.H Bhutani *v.*
Mani J. Desai.
Cr.A. No. 17 of 1967.

Criminal Procedure Code (*V of* 1898), *Section* 145—*Indian Penal Code* (*XLV of* 1860), *Section* 341

The jurisdiction under section 145 Criminal Procedure Code being, no doubt, of an emergency nature the Magistrate must act with caution but that does not mean that where on an app lication by one of the parties to the dispute he is satisfied that the requirements of the section are existent, he cannot initite proceedings without a police report. The view taken in the aforesaid two decisions unnecessarily and without any warrant from the language of sub-section (1) limits the discretion of the Magistrate and renders the words " other information" either superfluous or qualifies them to mean other information verified by the police. In our view, once the Magistrate, having examined the applicant on oath, was satisfied that his application disclosed the existence of the dispute and the likelihood of breach of peace, there was no bar against his acting under section 145 (1).

The proviso is founded on the principle that forcible and wrongful dispossession is not to be recognised under the criminal law. So that it is not possible to say that such an act of dispossession was completed before the date of the order. To say otherwise would mean that if a party who is forcibly and wrongfully dispossessed does not in retaliation take the law into his hands, he should be at adisadvantage and cannot have the benefit of section 145.

In our view, the High Court erred in holding that merely because dispossession of the appellant was completed before 20th June, 1966, there was no dispute existing on that day which was likely to lead to breach of peace or that the Magistrate was, therefore, prevented from passing his preliminary order and proceeding thence to continue the enquiry and pass his final order. In our view, reading section 145 as a whole, it is clear that even though respondent 1 had taken over possession of the said cabin, since that incident took place within the prescribed period of two months next before the date of the preliminary order, the appellant was deemed to be in possession on the date of that order and the Magistrate was competent to pass the final order directing restoration of possession and restraining respondent 1 from interfering with that possession until the appellant's eviction in due course of law.

S Bhutani and *Urmila Kapur*, Advocates, for Appellant.

B.R L. Iyengar, Senior Advocate (*P.C. Bhartari*, Advocate for *M/s. J.B. Dadachanji & Co.*, with him), for Respondents.

G.R. *Appeal allowed.*

[SUPREME COURT]

M. Hidayatullah, C. J, J. C Shah, S M. Sikri, V. Ramaswami and V. Bhargava, JJ
23rd April, 1968.

Triloki Nath Tiku v. State of Jammu Kashmir.
W.P. No. 107 of 1965.

Constitution of India (1950), *Article* 16—*Communal considerations for appointment and promotions*

Article 16 in the first instance by clause (2) prohibits discrimination on the ground, *inter alia*, of religion, race, caste, place of birth or residence and permits an exception to be made in the matter of reservation in favour of backward classes of citizens The expression "backward class" is not used as synonymous with " backward caste " or " backward community " The members of an entire caste or community may in the scoial, economic and educational scale of values at a given time be backward and may on that account to be treated as a backward class, but that is not because they are members of a caste or community, but because they form a class. In its ordinary cannotation the expression " Class " means a homogenous section of the people grouped together because of certain likenesses or common traits, and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like But for the purpose of Article 16 (4) in determining whether a section forms a class, a test solely based on caste, community, race, religion, sex, descent, place of birth or residence cannot be adopted, because it would directly offend the Constitution.

As already observed, the normal rule contemplated by the constitutional provision is equality between aspirants to public employment, but in view of backwardness of certain classes it would be open to the State to make a provision for reservation of appointments or posts in their favour when the State proceeds not to make reservations in favour of any backward class, but to distribute the total number of posts or appointments on the basis of community or place of residence, no reservation permitted by clause (4) of Article 16 can be said to be made. In effect the State policy which Malik Ghulam Nabi spoke to was a policy not of reservation of some appointments or posts ; it was a scheme of distribution of all the posts community wise Distribution of appointments, posts or promotions made in implementation of that State policy is contrary to the constitutional guarantee under Article 16 (1) and (2) and is not saved by clause (4).

The promotions granted to respondents 3 to 83 are accordingly declared contrary to the provisions of Articles 16 (1), (4) of the Constitution and therefore void. This will not however prevent the State from devising a scheme, consistent with the Constitutional guarantees, for reservation of appointments, posts or promotions in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State The petitioners will be entitled to their costs of the petition including the costs of the hearing which culminated in the interlocutory order, and the costs incurred before the High Court.

M. C. Setalvad, Senior Advocate, (*Naunit Lal* and *R Gopalakrishnan*, Advocates, with him), for Petitioners

C. K Daphtary, Attorney General for India (*M. S K Sastri, R H. Dhebar* and *R. N. Sachthey*, Advocates, with him), for Respondents Nos 1 and 2.

G.R. — *Petition allowed.*

[SUPREME COURT]

J.M. Shelat, K S Hegde and A N Grover, JJ. 25*th April*, 1968.

Seth Loon Karan Sethiya *v.* Ivan E. John. C A No. 644 of 1965.

Contract Act (IX of 1872), *section* 202—*Order* 21, *rule* 16 *and section* 146 *and* 147, *Civil Procedure Code (V of* 1908)—*The scope of power-of-attorney.*

There is hardly any doubt that the power given by the appellant in favour of the Bank is a power coupled with interest. That is clear both from the tenor of the document as well as from its terms. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest . It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked The document itself says that the power given to the Bank is irrevocable It must be said in fairness to Shri Chagla that he did not contest the finding of the High Court that the power in question was irrevocable.

The interest of the appellant under the decree cannot be said to have been transferred to the Bank either in writing or by operation of law.

The Courts in India, which administer both law as well as equity, have followed the rule laid down in *Watson* v. *The Duke of Wellington* (1830) 39 E R. 231 and *Burn* v. *Carvalho* (1839) 41 E R 265 , In this connection reference may be made to the decision of the Bombay High Court in *Jagabhai Lallubhai* v. *Rustamji Nasarwanji*, (1885) I L R. 9 Bom. 311 ; and of the Patna High Court in *Prahlad Pd. Modi* v. *Tikaitni Faldani Kumari*, A I R (1956) Pat 233 ; In the latter case, the Patna High Court held that a transaction similar to the one we are concerned in this case, in substance amounted toallocation of fund to be appropriated towards the debt and therefore it is an equitable assignment No decision taking a contrary view has been brought to our notice We advance the interest of justice. We accordingly adopt that rule.

M C Chagla, Senior Advocate (*B Dutta*, Advocate and *O C Mathur*, Advocate of *M/s. J B Dadachanji & Co.*, with him), for Appellant

C B. Agarwala, Senior Advocate (*V.D. Mahajan*, Advocate, with him), for Respondent No. 8.

G R. ——— *Appeal dismissed.*

[SUPREME COURT.]

V. Ramaswami, G K. Mitter and *C.A. Vaidialingam, JJ.* 30*th April*, 1968

Govind Sahal *v.* State of U.P. Cr A No 65 of 1966.

Constitution of India (1950), *Article* 361, *Clauses* (2) *and* (3)—*Contempt Proceedings.*

In the instant case, the passing of the orders of expulsion, by the two appellants against the second respondent, and the filing of a supporting affidavit, in the suit by the second appellant, clearly indicate that it was a deliberate attempt, by the appellants, to interfere with, or prejudice the second respondent, in the conduct of the litigation, instituted by him It is no answer that the action, by way of expulsion, was taken on the basis of the Resolution, of the All India Congress Working Committee, and to enforce discipline, in the Congress Organization As emphasized by Das, J , in *Pratap Singh's case*, (1963) 1 S C J 87: (1963) M L J (Crl) 49· (1963) 1

M.L.J. (S.C) 55 : (1963) 1 An W R (S C) 55 : (1962) 2 S.C R. (Supp) 838, 848. "any conduct, which interferes, with, or prejudices parties litigant, during the litigation, is undoubtedly contempt of Court' The High Court, in this case, was justified in holding the appellants guilty of contempt. We agree with the said conclusion.

Before closing the discussion, on this matter we may state that Mr Garg referred us, to the decision in *Webster* v *Bakewell Rural Council* L.R. (1916) 1 Ch 300, and urged that, on the principles, laid down therein, the appellants were not guilty of contempt. The consideration of this English decision, need not detain us much, because it has been adverted to, by Das, J, in *Partap Singh's case* (1963) 1 S.C J. 87: (1963) M L.J. (Crl) 49 and distinguished. Therefore, *Webster's case*, L R. (1916) 1 Ch. D. 300 does not apply, to the facts of the instant case.

R.K. Garg and *S C. Agarwal*, Advocates of *M/s Ramamurthy & Co*, for Appellants.

G.R. — *Appeal dismissed*

[SUPREME COURT]

R.S. Bachawat, and *A.N. Grover, JJ* 30*th April*, 1968. — Jai Lal *v*. The Delhi Administration. Crl. A. No 38 of 1965

Penal Code (*XLV of* 1860), *sections* 302 *and* 324 *and* 84

If a person by reason of unsoundness of mind is incapable of knowing the nature of the act or that he is dowing what is either wrong or contrary to law he cannot be guilty of any criminal intent Such a person lacks the requisite *mens rea* and is entitled to an acquittal But it is not established in the present case that the appellant was suffering from this incapacity The general burden is on the prosecution to prove beyond reasonable doubt not only the *actus reus* but also the *mens rea* The prosecution satisfactorily discharged this burden The appellant was not insane at the time of the killing and stabbing and he knew the consequences of his acts. We must hold that he is criminally responsible for the acts In the result, the appeal is dismissed.

S.N. Prasad, Advocate (*Amicus Curiea*), for Appellant.

H R. Khanna and *S P. Nayyar*, Advocates, for Respondent

G.R. — *Appeal dismissed.*

[SUPREME COURT]

V. Ramaswami and *C.A. Vaidialingam, JJ.* 1*st May*, 1968 — Ashiq Miyan *v* State of M P. Cr A No 128 of 1966

Penal Code (*XLV of* 1860), *section* 120-*B and section* 9 (a) *of the Opium Act* (*I of* 1878) (*hereinafter called the Act*)—*Sections* 251-A *and* 252, *Criminal Procedure Code* (*V of* 1898)—*Opium* (*Madhya Pradesh*) *Amendment Act* (*XV of* 1955), *section* 20.

We have already referred to the Full Bench decision of the Madhya Pradesh High Court, *Ashiqui Miyam* v *The State of M P*, A I.R. 1966 M. P 1 (F B) wherein these facts have been stated No doubt, Counsel for the appellants has urged that, even under those circumstances, a trial for an offence under the Opium Act, cannot be held, under section 251-A We are not inclined to accept, this contention of the learned Counsel. More or less, a similar question arose before the constitution Bench of this Court in *Amalshah's case* (Unreported decision in Cr A No 201 of 1963 decided on 11th December, 1964 Similar contentions were also urged, and reliance was placed on section 20-G of the Act, as applied

to Madhya Pradesh. This Court, after referring to the material provisions of section 20-G, by its judgment, dated 11th December, 1964, declined to express an opinion on the larger question, that the report, made by an exercise officer cannot be held to be a police report, so as to attract section 251-A, of the Code of Criminal Procedure. In that decision, this Court actually found that the proceedings. against the appellant before them, commenced on the report, of a Police Officer, and not on the report, of an excise officer, and that the complaint, lodged before the Magistrate, had been signed by the police officer, who investigated the offence.On these findings, this Court held that, inasmuch as the proceedings commenced, on a report made by a police officer, section 251-A, Criminal Procedure Code, in terms, would apply, and hence the trial held, under that section, in that case, was perfectly legal. Therefore, it will be seen, that in respect of a trial, conducted by a Magistrate, on a report made by a police officer, under the Opium Act, as applicable to the State of Madhya Pradesh, for an offence under that Act, this Court held that section 251-A, Criminal Procedure Code, applied.

In the case before us, on the facts, it is clear that the investigation was done by a police officer, the seizure of the articles and the arrest, of the accused, were effected, by a police officer, and the complaint or report, dated 23rd October, 1960, to the Magistrate, was made, by the Police Officer It is, on this report of the police officer, that the Magistrate acted further, and the trial also followed Under these circumstances, it is clear that section 251-A, Criminal Procedure Code., directly applies and it was, in accordance with the procedure, indicated in that section, that the trial was held. It follows, that there is no illegality, in the trial.

C L. Sareen and *R. L. Kohli*, for Appellants.

I. N. Shroff, Advocate, for Respondent

G.R. *Appeal dismissed.*

[SUPREME COURT.]

V. Ramaswami and *C. A. Vaidialingam, JJ.*
1st May, 1968.

Shiv Raj Singh *v.* The Delhi Administration.
Cr. A. No 124 of 1966.

Prevention of Corruption Act (II of 1947), *sections* 5 (2) *and* 161, *Penal Code.*

Upon the facts which have been found by the High Court to be proved there can be no doubt that the appellant was guilty of grossly abusing his position as public servant within the meaning of section 5 (1) (*d*) of the Prevention of Corruption Act and thereby obtained for himself a valuable thing or pecuniary advantage, and the charge under that section is established. We are therefore of the opinion that Mr. Chagla is unable to make good his argument on this aspect of the case also.

Lastly, Mr. Chagla submitted that the sentence of imprisonment was excessive. We are unable to accept this contention Upon the finding of the High Court in this case it is manifest that the appellant grossly abused his position as a police officer and extorted moneys from Russel Nathaniel and his wife and also a gold ring from Roshan Lal The appellant in his official capacity as a police officer was expected to maintain a high standard of integerity and to uphold the maintenance of law. Instead the proved facts disclose that there was a gross abuse of his official position on the part of the appellant and in the circumstances of the case we are satisfied that the sentence imposed is not excessive

M. C Chagla, Advocate, (*E. C Agarwala, Miss Santosh Agarwala*, and *P. C. Agarwala*, Advocates, with him), for Appellant.

D. Narasraju, Senior Advocate (*R. N. Sachthey*, Advocate, with him), for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]
V. Ramaswami and
C. A. Vaidialingam, JJ.
1st May, 1968.

Ishwarlal Girdharilal Parekh *v.*
State of Maharashtra.
Cr. A. No. 109 of 1969.

Penal Code (XLV of 1860), *section* 420 *read with section* 5 (1) (d) *and* 5 (2) *Prevention of Corruption Act (II of* 1947), *section* 468 *Indian Penal Code, sections* 29, 30 *Indian Penal Code—Order of assessment by Income-tax Officer a valuable security.*

In our view the word 'property' occurring in section 420 Indian Penal Code, does not necessarily mean that the thing, of which a delivery is dishonestly desired by the person who cheats, must have a money-value or a market-value, in the hand of the person cheated Even if the thing has no money value, in the hand of the person cheated, but becomes a thing of value, in the hand of the person, who may get possession of it, as a result of the cheating practised by him, it would still fall within the connotation of the term 'property', in section 420 Indian Penal Code.

An offence under section 420, Indan Penal Code will also be made out, if it is established that the accused have cheated and, thereby, dishonestly induced the Income-tax Officer to make a ' valuable security ' This takes us to the question: " Is the assessment order, a 'valuable security'? We have already referred to section 30, Indian Penal Code defining valuable security '. The assessment order is certainly a ' document ', under section 29, Indian Penal Code. The order of assessment does create a right, in the assessee, in the sense that he has a right to pay tax only on the total amount assessed therein and his liability to pay tax is also restricted to that extent. Therefore, an 'order of assessment ' is a 'valuable security ' under section 420, Indian Penal Code . Therefore, if the cheating, employed by the accused, resulted in inducing the Income-tax Officer to make a wrong assessment order, it would amount to inducing the Income-tax Officer, to make a ' valuable security '.

A. S. R Chari, Senior Advocate (*N. C Maniar* and *P. C. Bhartari*, Advocates, and *J. B Dadachanji*, Advocate of *M/s J B Dadachanji & Co.*, with him), for Appellant.

G. L. Sanghi and *S. P. Nayyar*, Advocates, for Respondent No. 1.

N. C. Maniar, Advocate, and *K. L. Hathi* and *Atiqur Rehman*, Advocates of *M/s. Hathi & Co*, for Respondent No. 2

G. R. *Appeal dismissed.*

[SUPREME COURT.]
J. C. Shah and
V. Bhargava, JJ.
1st May, 1968.

Harcharan Singh *v.*
S Mohinder Singh.
C.A. No. 1554 of 1967

Representation of the People Act (XLIII of 1950), *section* 100 (1)(*b*) (*i*), *section* 36 (2).

The statutory requirements of election law must be strictly observed. An election dispute is a statutory proceeding unknown to the common law : it is not an action at law or in equity. As a copy of the relevant entries from the electoral roll relating to the appellant it was indisputably defective. But under section 36 (4) the Returning Officer is entitled to accept the nomination paper even if it be defective, if the defect is not of a substantial character, indeed he is enjoined not to reject the nomination paper unless the defect is of a substantial character The details for identifying the appellant as an elector were duly furnished His age was mentioned in the nomination paper, though it was not to be found in the certified copy produced by the appellant. No objection was raised to the acceptance of the nomination paper on behalf of the contesting candidate and his agents present at the scrutiny. The Returning Officer satisfied himself by personal inquiry that the

appellant was above the age of twenty-five and therefore competent to stand for election It is true that he did not apply his mind to the absence of house number entered in the electoral register. But he did not come to the conclusion that even though the copy produced was defective the defect was of a substantial character. The decision of the Returning Officer in the matter is not final and in appropriate cases it is open to the Court to reach a different conclusion in an election petition. But on a careful review of the proceedings of the Returning Officer we are of the opinion that the Returning Officer did not err in not rejecting the nomination paper ; the defects in Exhibit P. W. 1/4 were not of a substantial character

The primary purpose of the diverse provisions of the election law which may appear to be technical is to safeguard the purity of the election process, and the Courts will not ordinarily minimise their operation If there was any reason to think that the appellant was negligent, or that on account of defects which were found in the copy produced by the appellant the purity of the election process was likely to be affected, we would have been loath to disagree with the High Court But in this case the appellant moved the Electoral Registration Officer for a copy certifying the correctness of the entries in the list which had been supplied to him, and the Electoral Registration Officer supplied to him a copy which though defective, did include sufficient particulars for identifying the appellant No objection was raised before the Returning Officer and that officer after holding an inquiry was apparently of the view that there was no defect which could be regarded as of a substantial character. We do not think that any ground is made out for disagreeing with the view of the Returning Officer.

S V Gupte, Senior Advocate (*Mehra Singh Chaddah* and *Harbans Singh*, Advocates, with him), for Appellant

A K Sen, Senior Advocate (*R L Kohli* and *J C. Talwar*, Advocates, with him), for Respondent No 1.

G. R. *Appeal allowed.*

[SUPREME COURT.]

M Hidayatullah, C J.,
C. A Vaidialingam,
and *A. N Grover, J*
2nd May, 1968

Ishwar Singh Bindra *v.*
State of U. P.
Cr. As. Nos 190-191 of 1965.

Criminal Procedure Code (*V of* 1898), *section* 561-*A—Drugs Act* (*XXIII of* 1940), *section* 3 (b) (i) *as amended by Drugs* (*Amendment*) *Act* (*XXI of* 1962) *and Drugs Cosmetics* (*Amendment*) *Act* (*XIII of* 1964)—*Meaning of medicine or substance.*

Now if the expression " substances " is to be taken to mean something other than " medicine " as has been held in our previous decision it becomes difficult to understand how the word " and " as used in the definition of drug in section 3 (*b*) (i) between " medicines " and " substances " could have been intended to have been used conjunctively It would be much more appropriate in the context to read it disconjunctively. In Stroud's Judicial Dictionary, 3rd Edn it is stated at page 135 that " and " has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or Sometimes, however, even in such a connection, it is, by force of a context, read as " or ". Similarly in Maxwell on Interpretation of Statutes, 11th Edn , it has been accepted that " to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions " or " and " and " one for the other."

The scheme of clause (i) of section 3 (*b*) apparently is to take in all medicines or substances with the exception of such medicines or substances which are exclusively used or prepared for use in accordance with the Ayurvedic or Unani system of medicine. The exception made in the case of latter class of medicines or substances was essentially meant to cover only such medicines or substances which were used in the Ayurvedic or Unani system or were prepared for use in accordance with those

systems In other words all medicines or substances had, under section 16 of the Act, to comply with the standard set out in the Schedule, as it stood before the amendment made by Act XIII of 1964 In the Schedule classes of drugs and the standard which was to be complied with were set out with reference mostly to the standards maintained at the National Institute for Medical Research, London and the standards of identity, purity and strength specified in the (current edition for the time being of the British Pharmacopoeia) or the British Pharmaceutical Codex or any other prescribed pharmacopoeia, or adopted by the Permanent Commission on Biological Standardisation of the (World Health Organisation). Only one category consisting of medicines and substances used or prepared for use exclusively in accordance with the Ayurvedic or Unani system of medicine was taken out of the definition of drug before the amendments made by Act XIII of 1964 That Act, as mentioned before, deleted the exception

In our view medicines or substances have to be taken as a whole and in the present cases it will have to be decided by the trial Magistrate whether Bindra's Antiphlogistic Plaster and Bindra's Yabrooj Plaster (Belladona Plaster) are medicines which are exclusively used or which have been prepared for use exclusively in " cordance with the Ayurvedic or Unani system of medicine As regards the adverb acexclusively " we concur in the view of the High Court that it must be taken to govern the words " used " as well as " prepared for use ", but in our opinion each individual ingredient or component of the preparation in question will not be the decisive or determining factor and what the Court will have to decide after recording such evidence as may be produced will be whether the aforesaid medicines (they can hardly be called substances) were exclusively used or were prepared for use exclusively in accordance with the Ayurvedic or Unani system If they fulfil the test they would be excluded

Bishan Narain, Senior Advocate (*Harbans Singh*, Advocate, with him), for Appellants.

G N. Dikshit and *O P. Rana*, Advocates, for Respondent.

G. R. *Appeals dismissed.*

[SUPREME COURT]

V. Ramaswami and *C A Vaidialingam, JJ.* *2nd May*, 1968.

Dr. Devendra M Surti *v.* State of Gujarat. Cr A. No 102 of 1966.

Bombay Shops and Establishment Act (*LXXIX of* 1948) (*hereinafter referred to as the Act*)—*Rules framed under the Act*

It is therefore clear that a professional activity must be an activity carried on by an individual by his personal skill and intelligence There is a fundamental distinction therefore between a professional activity and an activity of a commercial character and unless the profession carried on by the appellant also partakes of the character of a commercial nature, the appellant cannot fall within the ambit of section 2 (4) of the Act In *The National Union of Commercial Employees and another* v. *M R Meher, Industrial Tribunal, Bombay*, (1962) 3 S C R (Supp) 157. A.I.R 1962 S C 1080, it was held by this Court that the work of solicitors is not an industry within the meaning of section 2 (*j*) of the Industrial Disputes Act, 1947 and therefore any dispute raised by the employees of the solicitors against them cannot be made the subject of reference to the Industrial Tribunal

Applying a similar line of reasoning in *The State of Bombay* v. *The Hospital Mazdoor Sabha*, (1960) S C J 679 (1960) 2 S C R 866, we are of opinion that the dispensary of the appellant would fall within the definition of section 2 (4) of the Act if the activity of the appellant is organised in the manner in which a trade or business is generally organised or arranged and if the activity is systematically or habitually undertaken for rendering material services to the community at large or a part of such community with the help of the employees and if such an activity generally involves co-operation of the employer and the employees. To put it differently

the manner in which the activity in question is organised or arranged, the condition of the co-operation between the employer and the employees being necessary for its success and its object being to render material service to the community can be regarded as some of the features which render the carrying on of a professional activity to fall within the ambit of section 2 (4) of the Act. Tested in the light of these principles, we hold that the case of the appellant does not fall within the purview of the Act and the conviction of the appellant of the offence under section 52 (*c*) of the Act read with section 62 of the Act and rule 23 (1) of the Rules is illegal.

S. T. Desai, Senior Advocate (*Arun H. Mehta* and *I N Shroff*, Advocates, with him), for Appellant

R. H. Dhebar and *M S. K. Sastri*, Advocates, for Respondent

G.R. — *Appeal allowed.*

[SUPREME COURT.]

R. S Bachawat, J. M Shelat and *A N. Grover, JJ.* *2nd May*, 1968.

Dr. Laxman Balkrishna Joshi *v.* Dr. Trimbak Bapu Godbole. C A. No. 547 of 1965.

Torts—Suit for damages—Fatal Accidents Act (*English Act XIII of* 1858).

From the elaborate analysis of the evidence by both the trial Court and the High Court, it is impossible to say that they did not consider the evidence before them or that their findings were the result of conjectures or surmises, or inferences unwarranted by that evidence. We would not, therefore, be justified in reopening those concurrent findings or reappraising the evidence

In our view, there is no reason to think that the High Court was wrong in its conclusion that death was due to shock resulting from reduction of the fracture attempted by the appellant without taking the elementary caution of giving anaesthetic to the patient The trial Court and the High Court were, therefore, right in holding that the appellant was guilty of negligence and wrongful acts towards the patient and was liable for damages.

Purshotamdas, Tricumdas Senior Advocate (*I.N Shroff*, Advocate, with him), for Appellant.

Bishan Narain, Senior Advocate (*B Datta*, Advocate and *J B Dadachanji*, Advocate for *M/s. J.B. Dadachanji & Co.*, with him,) for Respondents.

G.R. — *Appeal dismissed*

[SUPREME COURT.]

J.M. Shelat, K.S. Hegde and *A N. Grover, JJ.* *3rd May*, 1968.

Kalinga Tubes Ltd. *v.* Their Workmen. C A. No 26 of 1968

Payment of Bonus Act (1965)—*Industrial Disputes Act* (*XIV of* 1947) (*hereinafter called the Act*), *section* 25-*FFF*, *sub-section* (1), *section* 2 (1)

Ordinarily, as is well-known, this Court does not interfere with findings of fact of a Tribunal, but the question whether the undertaking was closed down or not by means of the notice dated 3rd October, 1967 was not considered in a proper manner by the Tribunal and its approach was erroneous and suffered from a number of infirmities of such a nature that the conclusion arrived at by it cannot be regarded as sacrosanct or final. The entire facts and circumstances established in this case impel us to hold that the Management of the appellant closed down its principal undertaking of manufacturing and selling iron pipes and poles on 3rd October, 1967. It may be mentioned that it was and is not the case of the respondent that the continuation of water supply meant continuation of the undertaking of the appellant.

The only question which now remains to be determined is whether the undertaking was closed for " any reason whatsoever" or it was " on account of unavoidable circumstances" beyond the control of the employer. The measure of compensation

payable when an undertaking is closed down for any reason whatsoever is different as provided in sub-section (1) which refers to the provisions of section 25-F as if the workmen had been retrenched In the notice served by the Management in the present case it was claimed that the undertaking had been closed down under the proviso to sub-section (1) and actually compensation has been paid to the 613 workers in accordance with the proviso.

The *Explanation* appearing in the proviso gives some indication of the anxiety of the Legislature to expressly rule out certain contingencies which ordinarily could have been pleaded by the employer as unavoidable circumstances beyond his control. In the normal working of business of a commercial undertaking financial losses or accumulation of undisposed of stocks and the expiry of the period of the lease or the licence can ordinarily go a long way in establishing that it has virtually become impossible to carry on the business which in normal course, will have to be closed down. Similarly if the period of lease of the site on which a factory has been set up has expired and there is no provision for its renewal or extension it would ordinarily present insurmountable difficulty in the way of the working of an undertaking by a company or a commercial concern. Notwithstanding all this the Legislature provided that in spite of the aforesaid difficulties or impediments or obstacles the conditions of the proviso would not be satisfied merely by the happening or existence of the circumstances embodied in the *Explanation* The reason for doing so seems to be that whenever such difficulties as are mentioned in the *Explanation*, arise the employer is not expected to sit idly and not to make an all out effort like a prudent man of business in the matter of tiding over these difficulties for saving his business The Legislature was apparently being very stringent and strict about the nature of the circumstances which would bring them within the proviso The laying down of two preconditions therein in the language in which they are couched is significant and must be given due effect.

After considering the entire facts and circumstances of the present case we are not satisfied that the closure of the undertaking was due to unavoidable circumstances beyond the control of the appellant Thus compensation would be payable as if the undertaking was closed down "for any reason whatsoever" within section 25- FFF (1) of the Act

In the result the appeal is allowed and the award of the tribunal is set aside. The appellant shall be liable to pay compensation under the principal part of sub-section (1) of section 25-FFF of the Act. In view of the entire circumstances the parties are left to bear their own costs.

Sachin Choudhury, Senior Advocate (*M K Banerjee* and *B Parthasarathi*, Advocates and *J B Dadachanji*, *O C. Mathur* and *Ravinder Narain*, Advocates of *M/s J.B Dadachanji & Co.*, with him), for Appellant

Gobind Das and *R. Gopalkrishnan*, Advocates, for Respondents

G.R. *Appeal allowed.*

[SUPREME COURT]

J.C. Shah and *V. Bhargava, JJ.*
3*rd May*, 1968

S Rajagopal *v.* C M Armugam
C A. No 1553 of 1967

Representation of People Act (XLIII of 1950)*—Schedule Castes—Adi Dravida Hindu—Conversion to Indian Christian—Return to Hindu fold—Disqualification—Order* 41, *rule* 27, *Civil Procedure Code* (*V of* 1908)*—Opportunity of evidence before the Supreme Court.*

A request was put forward before us during the hearing of this appeal to direct the production of that register, but we do not think that there is any justification under Order 41, rule 27 of the Code of Civil Procedure for summoning it at this stage,parti-

cularly because, even if that register is brought a lot of oral evidence would have to be recorded in order to have the register properly proved and to give an opportunity to the party, against whom inferences follow from it, to meet those inferences In the circumstances, we have not entertained the request for summoning of that register at this stage. This is all the more so as we find that there is no evidence to show that an entry relating to the baptism of the appellant must necessarily find a place in the register in view of the fact that the appellant was baptized at the Ponnal Anicut Festival and not in the Church Consequently, the non-summoning of that register by the respondent does not detract from the value to be attached to the statement of P.W. 9.

In our opinion, if this test is applied to the present case, it must be held that at least by the year 1967, when the present election in question took place the appellant had started professing the Hindu Religion. He had openly married a Hindu wife. Even though the marriage was not celebrated according to the strict Hindu rites prevalent amongst Adi Dravidas, the marriage was not in Christian form and is alleged to have been in some reformed Hindu manner. Thereafter, the appellant in 1961 took the step of having his service cards corrected so as to show him as an Adi Dravida Hindu instead of a Christian. This was followed by his candidature as a member of the Adi Dravida Hindu Caste in the General Elections in 1962; and, subsequently, he gave out the caste of his children as Adi Dravida Hindus. These various steps taken by the appellant clearly amount to a public declaration of his professing the Hindu faith The first step of the marriage cannot, of course, by itself be held to be a sufficient public declaration that the appellant believed in Hindu Religion, but the subsequent correction of entries in service cards and his publicly standing as a candidate from the reserved Scheduled Caste Constituency representing himself as an Adi Dravida Hindu taken together with the later act of showing his children as Adi Dravida Hindus in the school records must be held to be a complete public declaration by the appellant that he was by this time professing Hindu Religion. Finally, in the General Elections of 1967 also, the appellant, by contesting the seat reserved for a member of a Scheduled Caste on the basis that he was an Adi Dravida Hindu, again purported to make a public declaration of his faith in Hinduism. In these circumstances, we hold that, at the relevant time in 1967, the appellant was professing Hindu Religion, so that paragraph of the Constitution (Scheduled Castes) Order, 1950 did not apply to him.

It is in our opinion, enough to take notice of the decision in *Goona Durgaprasada Rao* (alias) *Pedda Babu* v *Goona Sudarsanaswami* (1940), I M L J. 800: I L R. (1940) Mad : 653 : A.I.R. 1940 Mad. 513, where these two aspects were emphasised by a Full Bench of the Madras High Court In that case, the first question that arose was whether a person could become a convert to Hinduism without going through a formal ceremony of purification. It was held that no proof of any particular ceremonial having been observed was required. Varadachariar, J, held that when on the facts it appears that a man did change his religion and was accepted by his co-religionists as having changed his religion, and lived, died and was cremated in that religion, the absence of some formality should not negative what is an actual fact. Considering the question of entry into the caste, Krishnaswami Ayyangar, J., held that, in matters affecting the well-being or composition of a caste, the caste itself is the supreme judge. It was on this principle that a reconvert to Hinduism could become a member of the caste, if the caste itself as the supreme judge accepted him as a full member of it In the appeal before us, we find that the appellant had not given evidence to satisfy these requirements in order to establish that he did become a member of Adi Dravida Hindu Caste by the time of General Elections in 1967.

It is true that his close relatives, like his father and brother-in-law, treated him again as a member of their own caste, but the mere recognition by a few such relatives cannot be held to be equivalent to a recognition by the members of the caste in general. The candidature from the reserved seat in 1962 cannot also be held to imply any recognition by the members of the Adi Dravida Hindu Caste in general of the appellant

as a member of that caste. Consequently, it has to be held that the appellant has failed to establish that he became a member of the Adi Dravida Hindu Caste after he started professing the Hindu religion , and this conclusion follows even on the assumption that a convert to Hinduism can acquire the membership of a caste Ordinarily, the membership of a caste under the Hindu Religion is acquired by birth Whether the membership of a caste can be acquired by conversion to Hinduism or after reconversion to Hinduism is a question on which we have refrained from expressing our opinion, because even on the assumption that it can be acquired, we have arrived at the conclusion that the appellant must fail in this appeal.

A K. Sen, Senior Advocate (*S S. Javali and M. Veerappa*, Advocates, with him), for Appellant.

Sarjoo Prasad, Senior Advocate, *S Balakrishnan* and *S S. Khadunja*, Advocates, with him), for Respondent No 1.

G R. —— *Appeal dismissed.*

[SUPREME COURT.]
J. M Shelat and
K. S Hegde, JJ.
3rd May, 1968.

Orient Paper Mills Ltd. *v* The Union of India.
C.As. Nos 659-664 of 1965.

Central Excises and Salt Act(I of 1944), (*hereinafter referred to as the Act*), *Item* 17 (3) *of the first Schedule—Finance Act* (*XIV of* 1961)—*Revisional powers of the Central Government—Quasi-Judicial functions.*

Applying its earlier decision in *B Rajagopala Naidu* v. *S T. A. Tribunal*, (1964) 2 S C J. 570: (1964) 2 M.L J (S C) 131 : (1964) 2 An W R (S C) 131 : (1964) 7 S C R 1: A I R 1964 S C. 1573, the Court held the rule laid down in the above decision is fully applicable to the facts of this case It is obvious as well as admitted that both the Collector and the Central Government proceeded on the basis that the direction given by the Board was decisive of the matter. The revision applications filed before the Government were heard and decided by one of the Members of the Board He appears to have proceeded on the basis that in view of the directions given by the Board nothing more need be said as to the point in dispute It is regrettable that when administrative officers are entrusted with quasi judicial functions, often times they are unable to keep aside administrative considerations while discharging quasi judicial functions This Court as well as the High Courts have repeatedly tried to impress upon them that their two functions are separate , while functioning as quasi judicial officers they should not allow their judgments to be influenced by administrative considerations or by the instructions or directions given by their superiors. Even if the question of the legality of the direction issued by the Board had not been taken before the authorities under the Act, as that direction completely vitiates the proceedings and makes a mockery of the judicial process, we think we ought to consider the legality of that direction. For the reasons already mentioned, we hold that that direction was invalid and the same has vitiated the proceedings before the Collector as well as the Government.

Both the appellant as well as the Revenue invited us to decide the case on the basis of the material on record Ordinarily this Court does not go into questions of fact. That is the duty of the authorities under the Act We see no exceptional circumstances in this case requiring us to deviate from the ordinary rule.

Cases considered : C A No 635/64 decided on 22nd September, 1965.

S Ray, Senior Advocate (*R. K Choudhury, A. N. Parikh* and *B P Maheshwari*, Advocates, with him), for Appellant.

Seiyed Mohd., Advocate (*S P. Nayyar*, Advocate, with him), for Respondent.

G R. *Appeals allowed.*

[SUPREME COURT.]
J C Shah and
V. Bhargava, JJ.
3*rd May*, 1968.

Amrit Lal Ambalal Pate *v.*
Himathbhai Gomnabhai Patel.
C A. No 1603 of 1967.

Representation of People Act (*XLIII of* 1950)—25 *years age—Sections* 36 (2) (a), 100—*Government of Union Territories Act* (*XX of* 1963)—*Article* 173 *of the Constitution.*

It is to be noticed that this provision makes a departure inasmuch as it lays down that the nomination paper is to be rejected if the candidate is not qualified under Article 173 of the Constitution on the date fixed for the scrutiny of nominations In the present case, the appellant had not attained the age of 25 years on 21st January, 1967, which was the date for scrutiny of nominations Consequently, the nomination paper of the appellant was liable to be rejected under section 36 (2) (*a*) of the Act. Since it was liable to be rejected on this ground, it must be held that his nomination had been improperly accepted. In such a case, under sectin 100 (1) (*d*), the High Court is to declare the election void, if the result of the election, in so far as it concerns the returned candidate, is found to have been materially affected. On the face of it, the consequence of the improper acceptance of the nomination of the appellant was that the result of the election was materially affected, because he was declared as duly elected when he was not entitled to that right on the ground that his nomination paper should have been rejected by the returning officer under section 36 (2) (*a*) of the Act. The election of the appellant had to be declared as void in these circumstances by the High Court not under section 100 (1) (*a*), but under section 100 (1) (*d*) (i) of the Act. The order made by the High Court setting aside the election of the appellant is, therefore in accordance with law There is no ground for interfering with it.

I N Shroff, Advocate, for Appellant.

S T Desai, Senior Advocate (*P.C Bhartari*, Advocate for *M/s. J B. Dadachanji & Co.*, with him), for Respondent No. 1.

G.R. *Appeal dismissed.*

Krishnaswamy Reddy, J
23rd October, 1967

P. Velan, *In re.*
Crl R.C No. 572 of 1967.
Crl.R.P.No. 565 of 1967.

Madras Village Panchayats Act (X of 1950), *section* 106—*Executive Officer of Panchayat—Charge of withdrawal of panchayat funds and non-utilisation of funds for purposes for which drawn—Breach of trust—Acting or purporting to act in the discharge of official duty—Sanction for prosecution, when necessary—Power of sanction—Delegation to Collector by Government—Validity*

The petitioner, the Executive Officer of a Panchayat Board, was charged that he, in his capacity as the Executive Officer of the Panchayat drew the Panchayat amounts from the local bank and from sub-treasury and committed breach of trust of the said amounts by non-utilising the amounts for the purpose of which they were drawn, an offence punishable under section 409, Indian Penal Code. On the question if sanction was required under section 106 of the Panchayat Act of 1950 and if the sanction by the Collector was valid.

Held, no sanction is necessary, since it cannot be said that the criminal breach of trust or misappropriation committed by the petitioner was while he was acting in the discharge of his official duties

It is not every offence committed by a public servant that requires sanction for prosecution ; Nor even every act done by him while he is actually in the performance of his official duties; sanction would be necessary if the Act complained of is strictly concerned with his official duties, so that it could be claimed to have been done by virtue of the office.

The answer to the question whether the petitioner committed breach of trust while acting or purporting to act in discharge of his official duty as the Executive Officer of the Panchayat, mainly depends upon the fact whether the Executive Officer spent the amount drawn by him in fact for the purpose for which it was drawn and whether he was authorised to spend such amount. If he was authorised to spend and if he had spent according to the direction and authorisation, it can be said that he spent while acting in discharge of his duty. If he had not spent the amount for the purpose for which it was drawn and committed breach of trust, it cannot be said that such breach of trust was committed while acting in discharge of his official duty.

The act of criminal misappropriation was not committed by the petitioner while he was acting or purporting to act in discharge of his official duties and the offence has no direct connection with the duties of the petitioner. The official status of the petitioner as Executive Officer provided an occasion or opportunity of committing the offence of misappropriation, by not utilising the amount for the purpose for which it was drawn

[Though the question whether the sanction accorded by the Collector was valid or not does not arise, the Court agreed with the view in *Public Prosecutor* v. *Arulswami*, (1964) 2 M.L.J. 184 : I.L.R (1964) 2 Mad. 190 : (1964) M.L.J. (Crl.) 521 : A.I.R. 1964 Mad 350, that the Government can delegate its powers of sanction to the Collector.]

C. F. Louis, for Petitioner.

R Veeramani, for Public Prosecutor.

V. S. *Petition dismissed.*

Veeraswami, J
2nd February, 1968

N Valliammal Achi *v.*
P. V. Chinnaswami Ambalam.
C R P No 2466 of 1966.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *section* 69—*Refund of half Court-fee—Suit on pronote*—Ex parte *decree on the basis of the evidence recorded for the plaintiff—Setting aside of* ex parte *decree—Later, suit settled out of Court—Whether plaintiff entitled to refund of half Court-fee*

Held, it cannot be said that the setting aside the *ex parte* decree would wipe out the evidence taken, nor would it obliterate the fact of the trial having taken place. The only inference flowing from the setting aside of the *ex parte* decree is it is open to the defendant to defend the suit That being the case, the petitioner is not entitled to refund of half the Court-fee

M. V Krishnan, for Petitioner

Respondent unrepresented

S.V J

Petition dismissed.

Krishnaswamy Reddy, J
15*th March,* 1968

Peria Mannadha Goundar *v.*
Marappa Goundar.
Crl. M.P.No. 2252 of 1967.

Criminal Procedure Code (V of 1898), *section* 145 (1)—*Existence of dispute likely to cause breach of peace—Satisfaction of Magistrate—Order in writing stating grounds—Mandatory—Likelihood of breach of peace—Existence at the date of the preliminary order—Essential—Preliminary order—If can be quashed*

In pursuance of a petition filed by the respondent under section 145 of the Code, the Magistrate on the basis of a police report dated 7th October, 1966, passed a preliminary order under section 145 (1) and issued notice to both the parties on 10th April, 1967 Thereupon the petitioners filed a petition before the Magistrate praying that the proceedings may be dropped in view of the fact that the Magistrate who issued a preliminary order had not stated that he was satisfied regarding the likelihood of the breach of peace The Magistrate dismissed the application and issued a fresh preliminary order calling upon the parties to put in statements The petitioners filed the petition in the High Court for quashing the proceedings.

Held, the preliminary order passed by the Sub-Divisional Magistrate has to be quashed.

It is mandatory under section 145 (1) of the Code that the Magistrate shall make an order in writing that he is satisfied either from a police report or other information that a dispute likely to cause the breach of peace exists and state the grounds of his satisfaction before requiring the parties to attend and putting in written statements

The preliminary order can be quashed if an objection is taken at the earliest point of time

Under section 145 (1) of the Code the Magistrate passing a preliminary order must be satisfied that the likelihood of the breach of peace exists on the date of the preliminary order If the preliminary order is based upon an earlier report long before the preliminary order was passed and without any further fresh information received in respect of the dispute it cannot be said that the Magistrate is satisfied that the likelihood of the breach of peace existed on the date of the preliminary order.

S R Srinivasan, for Petitioners.

T. S Subramaniam, for Respondent.

The Assistant Public Prosecutor, for State

V.S.

Petition allowed
Proceedings quashed.

Krishnaswamy Reddy, J
19th July, 1968

Rt Rev George Devadoss *v.*
Luke D Asirvatham.
Crl M P No. 470 of 1968.

Penal Code (XLV of 1860), *sections* 406, 477-*A—Donations paid to Bishop in response to appeal for funds for cyclone relief—Free donations without any conditions—No question of 'entrustment'—Funds property of the Bishop—No question of criminal breach of trust—Quashing of charges and proceedings.*

In response to the appeal made by the petitioners (the Bishop of a Diocese) to the Christian institutions and heads of institutions for donations for the purpose of affording relief to the victims of a cyclone, donations were received by him A private complaint was filed against the petitioners stating that they had committed criminal breach of trust in respect of the amount collected The case as disclosed by the evidence let in by the prosecution is that the petitioners have not used the amounts collected for the purpose for which they were received namely, to help people affected by the cyclone and that the moneys were distributed to the favourites of the first petitioner. The petition is to quash the charges and proceedings framed under sections 406 and 477-A of the Penal Code

Held, the proceedings have to be quashed on the ground that the facts do not constitute any offence

In the case of entrustment, the ownership of the property is retained by the person who entrusts the same Before there can be any entrustment there must be an obligation annexed to the ownership of the property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner

Once the parties had parted with their money in pursuance of the appeal made by the Bishop, that money became the property of the Bishop and the person who gave the money, does not retain any interest in that money and that, therefore, the question of entrustment, in those circumstances, will not arise

The various persons and institutions freely donated money without any condition as to how that money should be used Once the money came into the hands of the Bishop, it undoubtedly became the property of the Bishop It cannot be said that the moneys were entrusted to the Bishop by the people who donated it.

S. Mohankumaramangalam for *N T. Vanamamalai* and *V Gopinath*, for Petitioners

Advocate-General for *K R Natarajan*, for Respondent

V S. —— *Charges and Proceedings quashed.*

Natesan, J.
6th September, 1968

Nallanna Goundar *v.*
Muthuswami Goundar.
A S No 482 of 1964.

Madras Cultivating Tenants Protection Act (XXV of 1955), *sections* 2 (e) *and* 3 *and the Government Grants Act (XV of* 1895), *section* 3*—Lessee from the State—Lessee undertaking to surrender possession after the expiry of lease—Right of lessee—Whether entitled to benefits under Madras Cultivating Tenants Protection Act—Whether lands leased by State exempt from operation of the Act.*

The State could be considered a landlord under the Act.

Section 3 of the Government Grants Act saves a Government grant only in respect of provisions, restrictions, conditions and limitations over, which would be hit by the Transfer of Property Act

A.I R 1946 P C 127 and A I R. 1955 S.C. 298, relied on.

[It was pointed out that decisions reported in (1946) 2 M.L J. 171, 41 M.L.J. 494 and I L R 43 Mad 65, may not be good law in view of A.I.R. 1946 P.C. 127].

The Madras Cultivating Tenants Protection Act does not specifically exempt lands leased by the State to a tenant from the operation of the Act There is nothing special in the Act to conclude that it exempts the State by necessary implication. A State can clearly be a landlord and the Madras State is the landlord here There is nothing in the provisions of the Act suggestive of a distinction between lands held by citizens, Devasthanams, charitable institutions, trusts and the like and lands held by the State It is certainly open to the State, if it considers necessary in the larger interests of the State to get itself exempted by appropriate amendment of the statute. As the satute stands, the State can claim no exemption It follows that the plaintiff is entitled to declaration as prayed for

S. Palaniswami and *R. Kallappan*, for Appellant

The Additional Government Pleader, for Respondents

S V J. —— *Second Appeal allowed ; Leave granted.*

Alagiriswami, J.
5th November, 1968.

Minnadi *v.* Ponnan Kangani.
S A No 1480 of 1964.

Trusts Act (*II of* 1882), *sections* 63 *and* 64 *and Limitation Act* (*IX of* 1908), *section* 10—'Cestui que *trust—Plaintiff remitting money to his sister for purchasing property for him—Plaintiff's sister purchasing properties in her husband's name—Sale of properties by legal representatives of plaintiff's brother-in-law without consideration—Subsequent transfer by vendee without consideration—Whether plaintiff can trace properties in the hands of transferee.*

On the question whether under section 63 of the Trusts Act, the trust properties can be traced in the hands of the assignee without consideration an assignee or a legal representative of an assignee from the trustee-all these transfers being without consideration.

Held, from the reading of sections 63 and 64 of Trust Act together, it would appear that as long as a transferee for consideration has not intervened in this chain of transfers, the beneficiary would be entitled to proceed against the person in whose hands the trust properties are found. There is also no doubt that the fact that the trust properties were moneys and that they have subsequently been converted into other immovable properties, would not affect the right of the beneficiary.

There is ample authority for the proposition that a trust property can be followed into the hands of the person in whose hands, it may be found, however many the number of transfers it might have gone through and however many transformations it might have gone through from money to property and from property to money. The beneficiary can follow it as long as the trust property can be traced

I L R. 15 Cal 703 ; A.I R 1943 Pat 289 ; I L R. 38 Mad 1064 ; A.I R. 1938 Nag 30 ; I L R. 11 Mad 274; (1958) 2 An W R 164 ; A.I R. 1945 Sind. 57 ; Hanbury Modern Equity, 8th Edition, page 300 ; Lewin on Trusts, 16th Edition ; and Halsbury's 3rd Edition referred to

S. S. Marthandam, for Appellant.

Vedantachary for *A. S. Raman* and *S. Subramaniam,* for Respondent

S.V.J. *Second Appeal dismissed; Leave granted.*

Natesan. J.
15*th November*, 1968.

Govindaswamy *v.*
Mottayan Chettiar.
S A. No. 1220 of 1966.

Madras Hindu Religious and Charitable Endowment Act (XXII of 1959), *section* 109—*Valid dedication for religious and charitable endowment—What constitutes —Municipal Council transferring for consideration, property for constructing Pilliar temple—Transferee building temple—Installing diety and looking after affairs as trustee—Whether amounts to dedication—Alieanation by transferee—Purchaser not prescribing title before* 30*th September,* 1951—*Property does not vest in him.*

A dedication of property under Hindu Law for religious or charitable purpose may even be made orally. Though a dedication may be accompanied by religious ceremonies like *Sankalpa* and *Samarpana,* it is the intention that is material and the dedication may be expressed or inferred otherwise than from formal or religious ceremonies. Under Hindu Law all that is required to constitute a religious or charitable endowment is the intention to endow and the creation of a fund in fulfilment of that intention. In other words, it is necessary that the donor should divest himself of the property endowed.

No deed is necessary, and no trustee need be appointed and the law will impose the duties of a trustee upon the founder or his heir, or such other person as might have control over or possession of the endowed property.

On facts held, manifestly, such dedication has been made out in the present case, taking the conveyance from the Municipal Council for the purpose of constructing a Pilliar Temple and following it up by building a temple on the property, installing the Pilliar diety therein, planting a peepal tree and commencing worship

Held further, Respondent had not prescribed title to the property The property had not vested in him by that date. (30th September, 1951).

(1957) S.C J. 835 . (1957) 2 M.L.J. (S C.) 175 : (1957) 2 An.W R (S C.) 175 . A.I.R 1957 S C. 797 and (1909) 10 C L J. 357, and Mukerjee's Hindu Law of Religious and Charitable (2nd Edn.) referred to.

No leave.

A. Sundaram Ayyar and *S. V Jayaram,* for Appellant.

K. Sarvabhauman and *T. R. Mani,* for Respondent.

S.V J.

Second Appeal allowed.

[END OF VOLUME (1968) II M.L.J. (NOTES OF RECENT CASES.)]